

ASSEMBLY BILL

No. 1517

Introduced by Committee on Banking and Finance (Assembly Members Dababneh (Chair), Travis Allen (Vice Chair), Achadjian, Brown, Chau, Gatto, Kim, Low, Perea, and Mark Stone)

March 10, 2015

An act to amend Section 17511.1 of the Business and Professions Code, to amend Sections 1632.5, 1748.13, 1789.12, 1812.201, and 2923.3 of the Civil Code, to amend Sections 1101.1, 2207, 2510, 3100, 17713.12, 25207, 25243.5, 25247, 25254, 25401, 25604, 25607, 25612.5, 25614, 25702, 29542, 31408, 31503, and 31513 of the Corporations Code, to amend Sections 620, 622, 1070, 2105, 4057, 12104, 17210.2, 17214, 17311, 17320, 17331, 18405, 22105.1, 22159.5, 22160, 22756, 23070, 23071, 23072, 23073, 23074, 23102, 30217, 50140, 50303, 50307.1, and 50316.5 of, and to amend the heading of Article 4 (commencing with Section 670) of Chapter 7 of Division 1 of, and to repeal Section 1008 of, the Financial Code, to amend Sections 5970, 6254.5, 6254.12, 6254.22, 11840, 53344.1, 53638, and 54956.87 of the Government Code, to amend Sections 1341.10, 1341.11, 1341.12, and 1341.14 of, and to repeal Section 1341.9 of, the Health and Safety Code, to amend Sections 1280.7, 12693.35, 14053, and 15036 of the Insurance Code, to amend Section 4600.5 of the Labor Code, to amend Section 11604.5 of the Probate Code, to amend Section 408 of the Revenue and Taxation Code, and to amend Section 22005.1 of the Welfare and Institutions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 1517, as introduced, Committee on Banking and Finance. Business.

(1) Existing law abolished the Department of Corporations and the Department of Financial Institutions and transferred their responsibilities to the Department of Business Oversight, which is headed by a Commissioner of Business Oversight.

This bill would transfer additional duties from the abolished Department of Corporations and the abolished Department of Financial Institutions to the Department of Business Oversight and the Commissioner of Business Oversight, as specified. This bill would also update cross-references and outdated contact information with respect to the Department of Business Oversight. This bill would repeal obsolete provisions relating to the Department of Corporations.

(2) Existing law makes it unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to employ a device, scheme, or artifice to defraud, make an untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, or engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

This bill would instead make it unlawful for any person to offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading.

(3) Existing law limits the amount of funds of a bank or trust company that are deposited in any other financial institution, as specified, unless the financial institution has been designated as a depository for the funds of the depositing bank or trust company by a vote of the majority of the directors of the depositing bank or trust company and the financial institution has been approved by the commissioner as a depository for the purposes of these provisions.

This bill would repeal these provisions.

(4) Existing law, the Banking Law, prescribes the conditions pursuant to which a state-chartered bank may engage in the practice of banking. Existing law requires a bank to have authorization to open an office. Existing law defines core and noncore banking business and defines a

facility, in this context, as an office in this state at which a bank engages in noncore banking business but not core banking business.

This bill would delete the phrase “in this state” from the definition of a facility, as described above.

(5) Existing law requires an industrial loan company to annually file with the Commissioner of Business Oversight an audit report containing audited financial statements and other relevant information the commissioner may require relating to the company. Existing law further requires an industrial loan company whose certificate has been surrendered or revoked to submit to the commissioner a closing audit report containing audited financial statements, as specified.

This bill would repeal the requirement for the closing audit report.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17511.1 of the Business and Professions
2 Code is amended to read:
3 17511.1. As used in this article, “telephonic seller” or “seller”
4 means a person who, on his or her own behalf or through
5 salespersons or through the use of an automatic dialing-announcing
6 device, as defined in Section 2871 of the Public Utilities Code,
7 causes a telephone solicitation or attempted telephone solicitation
8 to occur which meets the criteria specified in subdivision (a), (b),
9 (c), or (d) and who is not exempted by subdivision (e), as follows:
10 (a) A telephone solicitation or attempted telephone solicitation
11 wherein the telephonic seller initiates telephonic contact with a
12 prospective purchaser and represents or implies one or more of
13 the following:
14 (1) That a prospective purchaser who buys one or more items
15 will also receive additional or other items, whether or not of the
16 same type as purchased, without further cost. For purposes of this
17 subdivision, “further cost” does not include actual postage or
18 common carrier delivery charges, if any.
19 (2) That a prospective purchaser will receive a prize or gift, if
20 the person also encourages the prospective purchaser to do either
21 of the following:
22 (A) Purchase or rent any goods or services.

1 (B) Pay any money, including, but not limited to, a delivery or
2 handling charge.

3 (3) That a prospective purchaser is able to obtain any item or
4 service at a price which the seller states or implies is below the
5 regular price of the item or service offered. This paragraph shall
6 not apply to retailers who, within the previous 12 months, have
7 sold a majority of their goods or services through in-person sales
8 at retail stores.

9 (4) That a prospective purchaser who buys office equipment or
10 supplies will, because of some unusual event or imminent price
11 increase, be able to buy these items at prices which are below those
12 that are usually charged or will be charged for the items.

13 (5) That the seller is a person other than the person he or she is.

14 (6) That the items for sale are manufactured or supplied by a
15 person other than the actual manufacturer or supplier.

16 (7) That the seller is offering to sell the prospective purchaser
17 any gold, silver, or other metals, including coins, diamonds, rubies,
18 sapphires, or other stones, coal or other minerals, or any interest
19 in oil, gas, or mineral fields, wells, or exploration sites, or any
20 other investment opportunity of any type whatsoever.

21 (8) That the seller is offering to make a loan, or to arrange or
22 assist in arranging a loan or to assist in providing information
23 which may lead to the obtaining of a loan, unless no payment of
24 any kind is made until the loan proceeds are disbursed to the
25 borrower.

26 (9) That a prospective purchaser will receive a credit card, as
27 defined in subdivision (a) of Section 1747.02 of the Civil Code,
28 if the purchaser pays an up front or preapplication fee for the credit
29 card to the telephonic seller.

30 (b) A solicitation or attempted solicitation which is made by
31 telephone in response to inquiries generated by unrequested
32 notifications sent by the seller to persons who have not previously
33 purchased goods or services from the seller or who have not
34 previously requested credit from the seller, to a prospective
35 purchaser wherein the seller represents or implies to the recipient
36 of the notification that any of the following applies to the recipient:

37 (1) That the recipient has in any manner been specially selected
38 to receive the notification or the offer contained in the notification.

39 (2) That the recipient will receive a prize or gift if the recipient
40 calls the seller.

1 (3) That if the recipient buys one or more items from the seller,
2 the recipient will also receive additional or other items, whether
3 or not of the same type as purchased, without further cost or at a
4 cost which the seller states or implies is less than the regular price
5 of such items.

6 However, this subdivision does not apply to the solicitation of
7 sales by a catalog seller who periodically issues and delivers
8 catalogs to potential purchasers by mail or by other means. This
9 exception only applies if the catalog includes a written description
10 or illustration and the sales price of each item of merchandise
11 offered for sale, includes at least 24 full pages of written material
12 or illustrations, is distributed in more than one state, and has an
13 annual circulation of not less than 250,000 customers.

14 (c) A solicitation or attempted solicitation which is made by
15 telephone in response to inquiries generated by advertisements on
16 behalf of the telephonic seller wherein it is represented or implied
17 that the seller is offering to sell to the prospective purchaser any
18 gold, silver, or other metals, including coins, diamonds, rubies,
19 sapphires, or other stones, coal or other minerals, or any interest
20 in oil, gas, or mineral fields, wells, or exploration sites, or any
21 other investment opportunity of any type whatsoever.

22 (d) A solicitation or attempted solicitation which is made by
23 telephone in response to inquiries generated by advertisements on
24 behalf of the telephonic seller wherein it is represented or implied
25 that the seller is offering to make a loan or to arrange or assist in
26 arranging a loan or to assist in providing information which may
27 lead to the obtaining of a loan, unless no payment of any kind is
28 made until the loan proceeds are disbursed to the borrower.

29 (e) For purposes of this article, “telephonic seller” or “seller”
30 does not include any of the following:

31 (1) A person offering or selling a security qualified under
32 Section 25110, 25120, or 25130 of the Corporations Code or
33 exempt from qualification under Chapter 1 (commencing with
34 Section 25100) of Part 2 of Division 1 of Title 4 of the
35 Corporations Code. The fact that a notice claiming an exemption
36 under the Corporate Securities Law of 1968 is filed with the
37 Department of ~~Corporations~~ *Business Oversight* does not create
38 an exemption under this paragraph.

1 (2) A person licensed pursuant to Part 1 (commencing with
2 Section 10000) of Division 4, when the solicited transaction is
3 governed by that law.

4 (3) A person licensed pursuant to Chapter 9 (commencing with
5 Section 7000) of Division 3, when the solicited transaction is
6 governed by that law.

7 (4) A person licensed or certificated pursuant to Part 2
8 (commencing with Section 680) of Division 1 of the Insurance
9 Code, including a person licensed pursuant to Chapter 5
10 (commencing with Section 1621) thereof, when the solicited
11 transaction is governed by that law.

12 (5) A person offering or selling a franchise registered pursuant
13 to Section 31110 of the Corporations Code or exempt from
14 registration under Chapter 1 (commencing with Section 31100)
15 of Part 2 of Division 5 of Title 4 of the Corporations Code. The
16 fact that a notice claiming an exemption under the Franchise
17 Investment Law is filed with the Department of ~~Corporations~~
18 *Business Oversight* does not create an exemption under this
19 paragraph.

20 (6) A person soliciting the sale of a seller assisted marketing
21 plan, as defined in Title 2.7 (commencing with Section 1812.200)
22 of Part 4 of Division 3 of the Civil Code, who has filed with the
23 Attorney General the documents required by Section 1812.203 of
24 the Civil Code.

25 (7) A person primarily soliciting the sale of a newspaper of
26 general circulation, as defined in Article 1 (commencing with
27 Section 6000) of Chapter 1 of Division 7 of Title 1 of the
28 Government Code, a magazine, or membership in a book or record
29 club whose program operates in conformity with the requirements
30 of Section 1584.5 of the Civil Code.

31 (8) A person soliciting business from prospective purchasers
32 who have previously purchased from the business enterprise for
33 which the person is calling.

34 (9) A person soliciting without the intent to complete and who
35 does not complete the sales presentation during the telephone
36 solicitation but completes the sales presentation at a later
37 face-to-face meeting between the solicitor and the prospective
38 purchaser. However, if a seller, directly following a telephone
39 solicitation, causes an individual whose primary purpose it is to

1 go to the prospective purchaser to collect the payment or deliver
2 any item purchased, this exemption does not apply.

3 (10) Any supervised financial institution or parent, subsidiary,
4 or subsidiary of parent thereof. As used in this paragraph,
5 “supervised financial institution” means any commercial bank,
6 trust company, savings and loan association, credit union, industrial
7 loan company, personal property broker, consumer finance lender,
8 commercial finance lender, or insurer, provided that the institution
9 is subject to supervision by an official or agency of this state or of
10 the United States.

11 (11) A person soliciting the sale of a preneed funeral
12 arrangement regulated by Article 9 (commencing with Section
13 7735) of Chapter 12 of Division 3.

14 (12) A person licensed pursuant to Chapter 19 (commencing
15 with Section 9600) of Division 3 when acting pursuant to that
16 licensure.

17 (13) A person soliciting the sale of services provided by a cable
18 television system licensed or franchised pursuant to Section 53066
19 of the Government Code or any other authority.

20 (14) A person or an affiliate of a person whose business is
21 regulated by the Public Utilities Commission.

22 (15) A person soliciting the sale of a commodity pursuant to
23 Part 2 (commencing with Section 58601) of Division 21 of the
24 Food and Agricultural Code, if the solicitation neither intends to,
25 nor actually results in, a sale which costs the purchaser in excess
26 of one hundred dollars (\$100).

27 (16) An issuer or subsidiary of an issuer that has a security listed
28 on a national securities exchange or designated as a national market
29 system security on an interdealer quotation system by the National
30 Association of Securities Dealers, Inc., if the exchange or
31 interdealer quotation system has been certified by rule or order of
32 the Commissioner of Corporations under subdivision (o) of Section
33 25100 of the Corporations Code. A subsidiary of an issuer that
34 qualifies for exemption under this paragraph is not itself exempt
35 unless not less than 60 percent of the voting power of its shares is
36 owned by the qualifying issuer or issuers.

37 (17) A person soliciting exclusively the sale of telephone
38 answering services to be provided by that person or that person’s
39 employer.

1 (18) A person soliciting a transaction regulated by the
2 Commodity Futures Trading Commission if the person is registered
3 or temporarily licensed for this activity with the Commodity
4 Futures Trading Commission under the Commodity Exchange Act
5 (7 U.S.C. Sec. 1 et seq.), and the registration or license has not
6 expired or been suspended or revoked.

7 (19) A person who sells coins or bullion at a price which is not
8 more than 25 percent more than the price at which the seller is
9 concurrently buying the same coins or bullion, if: (A) the seller
10 has had a retail location in California from which he or she has
11 been selling coins or bullion to the public in person for at least
12 three years; (B) the telephonic solicitations are not the person's
13 primary business and sales made telephonically make up less than
14 20 percent of the person's total retail sales; and (C) the person
15 claiming an exemption pursuant to this subdivision complies with
16 Section 17511.3, as applicable, and subdivision (p) of Section
17 17511.4.

18 (20) A person licensed pursuant to Chapter 14 (commencing
19 with Section 1800) of Division 1 of the Financial Code to receive
20 money for transmittal to foreign countries if the license has not
21 expired or been suspended or revoked.

22 (21) A person licensed as a residential mortgage lender or
23 servicer pursuant to Division 20 (commencing with Section 50000)
24 of the Financial Code, when acting under the authority of that
25 license.

26 (22) A corporation that meets all of the following conditions:

27 (A) It has been exempt from taxation under Section 23701e of
28 the Revenue and Taxation Code for a minimum of 10 years.

29 (B) It has maintained its principal purpose for a minimum of
30 10 years.

31 (C) It has been incorporated in the state for a minimum of 25
32 years.

33 (f) In any civil proceeding alleging a violation of this article,
34 the burden of proving an exemption or an exception from a
35 definition is upon the person claiming it, and in any criminal
36 proceeding alleging a violation of this article, the burden of
37 producing evidence to support a defense based upon an exemption
38 or an exception from a definition is upon the person claiming it.

1 (g) Compliance with this article does not satisfy nor substitute
2 for any requirements for license, registration, or regulation
3 mandated by other laws.

4 SEC. 2. Section 1632.5 of the Civil Code is amended to read:

5 1632.5. (a) A supervised financial organization that negotiates
6 primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,
7 whether orally or in writing, in the course of entering into a contract
8 or agreement for a loan or extension of credit secured by residential
9 real property, shall deliver to the other party to that contract or
10 agreement prior to the execution of the contract or agreement the
11 form described in subdivision (i) for that language.

12 (b) For purposes of this section:

13 (1) “Contract” or “agreement” shall have the same meaning as
14 defined in subdivision (g) of Section 1632.

15 (2) “Supervised financial organization” means a bank, savings
16 association, as defined in Section 5102 of the Financial Code,
17 credit union, or holding company, affiliate, or subsidiary thereof,
18 or any person subject to Division 7 (commencing with Section
19 18000), Division 9 (commencing with Section 22000), or Division
20 20 (commencing with Section 50000) of the Financial Code.

21 (c) (1) With respect to a contract or agreement for a loan or
22 extension of credit secured by residential real property as described
23 in subdivision (a), a supervised financial organization that complies
24 with this section shall be deemed in compliance with Section 1632.

25 (2) A supervised financial organization that complies with
26 Section 1632, with respect to a contract or agreement for a loan
27 or extension of credit secured by residential real property as
28 described in subdivision (a), shall be deemed in compliance with
29 this section.

30 (d) The supervised financial organization shall provide the form
31 described in subdivision (i) to the borrower no later than three
32 business days after receipt of the written application, and if any
33 of the loan terms summarized materially change after provision
34 of the translated form but prior to consummation of the loan, the
35 supervised financial organization shall provide an updated version
36 of the translated form prior to consummation of the loan.

37 (e) (1) This section does not apply to a supervised financial
38 organization that negotiates primarily in a language other than
39 English, as described by subdivision (a), if the party with whom

1 the supervised financial organization is negotiating, negotiates the
2 terms of the contract through his or her own interpreter.

3 (2) For purposes of this subdivision, “his or her own interpreter”
4 means a person, not a minor, able to speak fluently and read with
5 full understanding both the English language and one of the
6 languages specified in subdivision (a) that is the language in which
7 the contract was negotiated, who is not employed by, and whose
8 services are not made available through, the person engaged in the
9 trade or business.

10 (f) Notwithstanding subdivision (a), a translated form may retain
11 any of the following elements of the executed English language
12 contract or agreement without translation:

13 (1) Names and titles of individuals and other persons.

14 (2) Addresses, brand names, trade names, trademarks, or
15 registered service marks.

16 (3) Full or abbreviated designations of the make and model of
17 goods or services.

18 (4) Alphanumeric codes.

19 (5) Individual words or expressions having no generally accepted
20 non-English translation.

21 (g) The terms of the contract or agreement which is executed
22 in the English language shall determine the rights and obligations
23 of the parties. However, the translation of the form described in
24 subdivision (i) and required by subdivision (a) shall be admissible
25 in evidence only to show that no contract or agreement was entered
26 into because of a substantial difference in the material terms and
27 conditions of the contract or agreement and the prior translated
28 form provided to the borrower.

29 (h) (1) A licensing agency may, by order, after appropriate
30 notice and opportunity for hearing, levy administrative penalties
31 against a supervised financial organization that violates any
32 provision of this section, and the supervised financial organization
33 may be liable for administrative penalties, up to the amounts of
34 two thousand five hundred dollars (\$2,500) for the first violation,
35 five thousand dollars (\$5,000) for the second violation, and ten
36 thousand dollars (\$10,000) for each subsequent violation. Except
37 for licensing agencies exempt from the provisions of the
38 Administrative Procedure Act, any hearing shall be held in
39 accordance with the Administrative Procedure Act (Chapter 5
40 (commencing with Section 11500) of Part 1 of Division 3 of Title

2 of the Government Code), and the licensing agency shall have all the powers granted under that act.

(2) A licensing agency may exercise any and all authority and powers available to it under any other provisions of law to administer and enforce this section, including, but not limited to, investigating and examining the licensed person's books and records, and charging and collecting the reasonable costs for these activities. The licensing agency shall not charge a licensed person twice for the same service. Any civil, criminal, and administrative authority and remedies available to the licensing agency pursuant to its licensing law may be sought and employed in any combination deemed advisable by the licensing agency to enforce the provisions of this section.

(3) Any supervised financial organization that violates any provision of this section shall be deemed to have violated its licensing law.

(4) Nothing in this section shall be construed to impair or impede the Attorney General from bringing an action to enforce this division.

(i) ~~The Department of Corporations and the Department of Financial Institutions~~ *Business Oversight* shall create a form to be made available in each of the languages set forth in subdivision (a) for use by a supervised financial organization to summarize the terms of a mortgage loan pursuant to subdivision (a). In creating the form, the ~~Department of Corporations and the Department of Financial Institutions~~ *Business Oversight* may use as guidance the United States Department of Housing and Urban Development's Good Faith Estimate disclosure form.

(j) This section shall not apply to federally chartered banks, credit unions, savings banks, or thrifts.

(k) Except as otherwise provided in subdivision (h), this section shall not be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under state law, or limit any claim, right of action, or civil liability that otherwise exists under state law.

(l) An action against a supervised financial organization for a violation of this section may only be brought by a licensing agency or by the Attorney General.

(m) This section shall become operative beginning on July 1, 2010, or 90 days following the issuance of a form by ~~both~~ the

1 Department of ~~Corporations and the Department of Financial~~
2 ~~Institutions Business Oversight~~ pursuant to subdivision (i),
3 whichever occurs later.

4 SEC. 3. Section 1748.13 of the Civil Code is amended to read:

5 1748.13. (a) A credit card issuer shall, with each billing
6 statement provided to a cardholder in this state, provide the
7 following on the front of the first page of the billing statement in
8 type no smaller than that required for any other required disclosure,
9 but in no case in less than 8-point capitalized type:

10 (1) A written statement in the following form: “Minimum
11 Payment Warning: Making only the minimum payment will
12 increase the interest you pay and the time it takes to repay your
13 balance.”

14 (2) Either of the following:

15 (A) A written statement in the form of and containing the
16 information described in clause (i) or (ii), as applicable, as follows:

17 (i) A written three-line statement, as follows:

18 “A one thousand dollar (\$1,000) balance will take 17 years and
19 three months to pay off at a total cost of two thousand five hundred
20 ninety dollars and thirty-five cents (\$2,590.35).

21 A two thousand five hundred dollar (\$2,500) balance will take 30
22 years and three months to pay off at a total cost of seven thousand
23 seven hundred thirty-three dollars and forty-nine cents (\$7,733.49).

24 A five thousand dollar (\$5,000) balance will take 40 years and two
25 months to pay off at a total cost of sixteen thousand three hundred
26 five dollars and thirty-four cents (\$16,305.34).

27 This information is based on an annual percentage rate of 17
28 percent and a minimum payment of 2 percent or ten dollars (\$10),
29 whichever is greater.”

30 In the alternative, a credit card issuer may provide this
31 information for the three specified amounts at the annual percentage
32 rate and required minimum payment which are applicable to the
33 cardholder’s account. The statement provided shall be immediately
34 preceded by the statement required by paragraph (1).

35 (ii) Instead of the information required by clause (i), retail credit
36 card issuers shall provide a written three-line statement to read, as
37 follows:

38 “A two hundred fifty dollar (\$250) balance will take two years
39 and eight months to pay off a total cost of three hundred
40 twenty-five dollars and twenty-four cents (\$325.24).

1 A five hundred dollar (\$500) balance will take four years and five
2 months to pay off at a total cost of seven hundred nine dollars and
3 ninety cents (\$709.90).

4 A seven hundred fifty dollar (\$750) balance will take five years
5 and five months to pay off at a total cost of one thousand
6 ninety-four dollars and forty-nine cents (\$1,094.49).

7 This information is based on an annual percentage rate of 21
8 percent and a minimum payment of 5 percent or ten dollars (\$10),
9 whichever is greater.”

10 In the alternative, a retail credit card issuer may provide this
11 information for the three specified amounts at the annual percentage
12 rate and required minimum payment which are applicable to the
13 cardholder’s account. The statement provided shall be immediately
14 preceded by the statement required by paragraph (1). A retail credit
15 card issuer is not required to provide this statement if the
16 cardholder has a balance of less than five hundred dollars (\$500).

17 (B) A written statement providing individualized information
18 indicating an estimate of the number of years and months and the
19 approximate total cost to pay off the entire balance due on an
20 open-end credit card account if the cardholder were to pay only
21 the minimum amount due on the open-ended account based upon
22 the terms of the credit agreement. For purposes of this
23 subparagraph only, if the account is subject to a variable rate, the
24 creditor may make disclosures based on the rate for the entire
25 balance as of the date of the disclosure and indicate that the rate
26 may vary. In addition, the cardholder shall be provided with
27 referrals or, in the alternative, with the “800” telephone number
28 of the National Foundation for Credit Counseling through which
29 the cardholder can be referred, to credit counseling services in, or
30 closest to, the cardholder’s county of residence. The credit
31 counseling service shall be in good standing with the National
32 Foundation for Credit Counseling or accredited by the Council on
33 Accreditation for Children and Family Services. The creditor is
34 required to provide, or continue to provide, the information
35 required by this paragraph only if the cardholder has not paid more
36 than the minimum payment for six consecutive months, after July
37 1, 2002.

38 (3) (A) A written statement in the following form: “For an
39 estimate of the time it would take to repay your balance, making
40 only minimum payments, and the total amount of those payments,

1 call this toll-free telephone number: (Insert toll-free telephone
2 number).” This statement shall be provided immediately following
3 the statement required by subparagraph (A) of paragraph (2). A
4 credit card issuer is not required to provide this statement if the
5 disclosure required by subparagraph (B) of paragraph (2) has been
6 provided.

7 (B) The toll-free telephone number shall be available between
8 the hours of 8 a.m. and 9 p.m., Pacific standard time, seven days
9 a week, and shall provide consumers with the opportunity to speak
10 with a person, rather than a recording, from whom the information
11 described in subparagraph (A) may be obtained.

12 (C) The Department of ~~Financial Institutions~~ *Business Oversight*
13 shall establish a detailed table illustrating the approximate number
14 of months that it would take and the approximate total cost to repay
15 an outstanding balance if the consumer pays only the required
16 minimum monthly payments and if no other additional charges or
17 fees are incurred on the account, such as additional extension of
18 credit, voluntary credit insurance, late fees, or dishonored check
19 fees by assuming all of the following:

20 (i) A significant number of different annual percentage rates.

21 (ii) A significant number of different account balances, with
22 the difference between sequential examples of balances being no
23 greater than one hundred dollars (\$100).

24 (iii) A significant number of different minimum payment
25 amounts.

26 (iv) That only minimum monthly payments are made and no
27 additional charges or fees are incurred on the account, such as
28 additional extensions of credit, voluntary credit insurance, late
29 fees, or dishonored check fees.

30 (D) A creditor that receives a request for information described
31 in subparagraph (A) from a cardholder through the toll-free
32 telephone number disclosed under subparagraph (A), or who is
33 required to provide the information required by subparagraph (B)
34 of paragraph (2), may satisfy its obligation to disclose an estimate
35 of the time it would take and the approximate total cost to repay
36 the cardholder’s balance by disclosing only the information set
37 forth in the table described in subparagraph (C). Including the full
38 chart along with a billing statement does not satisfy the obligation
39 under this section.

40 (b) For purposes of this section:

1 (1) “Credit card” has the same meaning as in paragraph (2) of
2 subdivision (a) of Section 1748.12.

3 (2) “Open-end credit card account” means an account in which
4 consumer credit is granted by a creditor under a plan in which the
5 creditor reasonably contemplates repeated transactions, the creditor
6 may impose a finance charge from time to time on an unpaid
7 balance, and the amount of credit that may be extended to the
8 consumer during the term of the plan is generally made available
9 to the extent that any outstanding balance is repaid and up to any
10 limit set by the creditor.

11 (3) “Retail credit card” means a credit card is issued by or on
12 behalf of a retailer, or a private label credit card that is limited to
13 customers of a specific retailer.

14 (c) (1) This section shall not apply in any billing cycle in which
15 the account agreement requires a minimum payment of at least 10
16 percent of the outstanding balance.

17 (2) This section shall not apply in any billing cycle in which
18 finance charges are not imposed.

19 SEC. 4. Section 1789.12 of the Civil Code is amended to read:
20 1789.12. As used in this title:

21 (a) “Credit services organization” means a person who, with
22 respect to the extension of credit by others, sells, provides, or
23 performs, or represents that he or she can or will sell, provide or
24 perform, any of the following services, in return for the payment
25 of money or other valuable consideration:

26 (1) Improving a buyer’s credit record, history, or rating.

27 (2) Obtaining a loan or other extension of credit for a buyer.

28 (3) Providing advice or assistance to a buyer with regard to
29 either paragraph (1) or (2).

30 (b) “Credit services organization” does not include any of the
31 following:

32 (1) Any person holding a license to make loans or extensions
33 of credit pursuant to the laws of this state or the United States who
34 is subject to regulation and supervision with respect to the making
35 of those loans or extensions of credit by an official or agency of
36 this state or the United States and whose business is the making
37 of those loans or extensions of credit.

38 (2) Any bank, as defined in Section 102 of the Financial Code,
39 or any savings institution, as specified in subdivision (a) or (b) of
40 Section 5102 of the Financial Code, whose deposits or accounts

1 are eligible for insurance by the Federal Deposit Insurance
2 Corporation.

3 (3) Any person licensed as a prorater by the Department of
4 ~~Corporations~~ *Business Oversight* when the person is acting within
5 the course and scope of that license.

6 (4) Any person licensed as a real estate broker performing an
7 act for which a real estate license is required under the Real Estate
8 Law (Pt. 1 (commencing with Sec. 10000), Div. 4, B. & P.C.) and
9 who is acting within the course and scope of that license.

10 (5) Any attorney licensed to practice law in this state, where
11 the attorney renders services within the course and scope of the
12 practice of law, unless the attorney is an employee of, or otherwise
13 directly affiliated with, a credit services organization.

14 (6) Any broker-dealer registered with the Securities and
15 Exchange Commission or the Commodity Futures Trading
16 Commission where the broker-dealer is acting within the course
17 and scope of the regulation.

18 (7) Any nonprofit organization described in Section 501(c)(3)
19 of the Internal Revenue Code that, according to a final ruling or
20 determination by the Internal Revenue Service, is both of the
21 following:

22 (A) Exempt from taxation under Section 501(a) of the Internal
23 Revenue Code.

24 (B) Not a private foundation as defined in Section 509 of the
25 Internal Revenue Code.

26 An advance ruling or determination of tax-exempt or foundation
27 status by the Internal Revenue Service does not meet the
28 requirements of this paragraph.

29 (c) “Buyer” means any natural person who is solicited to
30 purchase or who purchases the services of a credit services
31 organization.

32 (d) “Extension of credit” means the right to defer payment of
33 debt or to incur debt and defer its payment, offered or granted
34 primarily for personal, family, or household purposes.

35 (e) “Consumer credit reporting agency” means a consumer credit
36 reporting agency subject to the Consumer Credit Reporting
37 Agencies Act, Title 1.6 (commencing with Section 1785.1).

38 (f) “Person” includes an individual, corporation, partnership,
39 joint venture, or any business entity.

1 SEC. 5. Section 1812.201 of the Civil Code is amended to
2 read:

3 1812.201. For the purposes of this title, the following
4 definitions shall apply:

5 (a) “Seller assisted marketing plan” means any sale or lease or
6 offer to sell or lease any product, equipment, supplies, or services
7 that requires a total initial payment exceeding five hundred dollars
8 (\$500), but requires an initial cash payment of less than fifty
9 thousand dollars (\$50,000), that will aid a purchaser or will be
10 used by or on behalf of the purchaser in connection with or
11 incidental to beginning, maintaining, or operating a business when
12 the seller assisted marketing plan seller has advertised or in any
13 other manner solicited the purchase or lease of the seller assisted
14 marketing plan and done any of the following acts:

15 (1) Represented that the purchaser will earn, is likely to earn,
16 or can earn an amount in excess of the initial payment paid by the
17 purchaser for participation in the seller assisted marketing plan.

18 (2) Represented that there is a market for the product, equipment,
19 supplies, or services, or any product marketed by the user of the
20 product, equipment, supplies, or services sold or leased or offered
21 for sale or lease to the purchaser by the seller, or anything, be it
22 tangible or intangible, made, produced, fabricated, grown, bred,
23 modified, or developed by the purchaser using, in whole or in part,
24 the product, supplies, equipment, or services that were sold or
25 leased or offered for sale or lease to the purchaser by the seller
26 assisted marketing plan seller.

27 (3) Represented that the seller will buy back or is likely to buy
28 back any product made, produced, fabricated, grown, or bred by
29 the purchaser using, in whole or in part, the product, supplies,
30 equipment, or services that were initially sold or leased or offered
31 for sale or lease to the purchaser by the seller assisted marketing
32 plan seller.

33 (b) A “seller assisted marketing plan” shall not include:

34 (1) A security, as defined in the Corporate Securities Law of
35 1968 (Division 1 (commencing with Section 25000) of Title 4 of
36 the Corporations Code), that has been qualified for sale by the
37 Department of ~~Corporations~~, *Business Oversight*, or is exempt
38 under Chapter 1 (commencing with Section 25100) of Part 2 of
39 Division 1 of Title 4 of the Corporations Code from the necessity
40 to qualify.

(2) A franchise defined by the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) that is registered with the Department of Corporations *Business Oversight* or is exempt under Chapter 1 (commencing with Section 31100) of Part 2 of Division 5 of Title 4 of the Corporations Code from the necessity of registering.

(3) Any transaction in which either the seller or purchaser or the lessor or lessee is licensed pursuant to and the transaction is governed by the Real Estate Law, Division 4 (commencing with Section 10000) of the Business and Professions Code.

(4) A license granted by a general merchandise retailer that allows the licensee to sell goods, equipment, supplies, products, or services to the general public under the retailer's trademark, trade name, or service mark if all of the following criteria are satisfied:

(A) The general merchandise retailer has been doing business in this state continually for five years prior to the granting of the license.

(B) The general merchandise retailer sells diverse kinds of goods, equipment, supplies, products, or services.

(C) The general merchandise retailer also sells the same goods, equipment, supplies, products, or services directly to the general public.

(D) During the previous 12 months the general merchandise retailer's direct sales of the same goods, equipment, supplies, products, or services to the public account for at least 50 percent of its yearly sales of these goods, equipment, supplies, products, or services made under the retailer's trademark, trade name, or service mark.

(5) A newspaper distribution system distributing newspapers as defined in Section 6362 of the Revenue and Taxation Code.

(6) A sale or lease to an existing or beginning business enterprise that also sells or leases equipment, products, supplies, or performs services that are not supplied by the seller and that the purchaser does not utilize with the equipment, products, supplies, or services of the seller, if the equipment, products, supplies, or services not supplied by the seller account for more than 25 percent of the purchaser's gross sales.

(7) The sale in the entirety of an "ongoing business." For purposes of this paragraph, an "ongoing business" means a business

1 that for at least six months previous to the sale has been operated
2 from a particular specific location, has been open for business to
3 the general public, and has had all equipment and supplies
4 necessary for operating the business located at that location. The
5 sale shall be of the entire “ongoing business” and not merely a
6 portion of the ongoing business.

7 (8) A sale or lease or offer to sell or lease to a purchaser (A)
8 who has for a period of at least six months previously bought
9 products, supplies, services, or equipment that were sold under the
10 same trademark or trade name or that were produced by the seller
11 and, (B) who has received on resale of the product, supplies,
12 services, or equipment an amount that is at least equal to the
13 amount of the initial payment.

14 (9) The renewal or extension of an existing seller assisted
15 marketing plan contract.

16 (10) A product distributorship that meets each of the following
17 requirements:

18 (A) The seller sells products to the purchaser for resale by the
19 purchaser, and it is reasonably contemplated that substantially all
20 of the purchaser’s sales of the product will be at wholesale.

21 (B) The agreement between the parties does not require that the
22 purchaser pay the seller, or any person associated with the seller,
23 a fee or any other payment for the right to enter into the agreement,
24 and does not require the purchaser to buy a minimum or specified
25 quantity of the products, or to buy products for a minimum or
26 specified period of time. For purposes of this paragraph, a “person
27 associated with the seller” means a person, including an individual
28 or a business entity, controlling, controlled by, or under the same
29 control as the seller.

30 (C) The seller is a corporation, partnership, limited liability
31 company, joint venture, or any other business entity.

32 (D) The seller has a net worth of at least ten million dollars
33 (\$10,000,000) according to audited financial statements of the
34 seller done during the 18 months preceding the date of the initial
35 sale of products to the purchaser. Net worth may be determined
36 on a consolidated basis if the seller is a subsidiary of another
37 business entity that is permitted by generally accepted accounting
38 standards to prepare financial statements on a consolidated basis
39 and that business entity absolutely and irrevocably agrees in writing
40 to guarantee the seller’s obligations to the purchaser. The seller’s

1 net worth shall be verified by a certification to the Attorney General
2 from an independent certified public accountant that the audited
3 financial statement reflects a net worth of at least ten million dollars
4 (\$10,000,000). This certification shall be provided within 30 days
5 following receipt of a written request from the Attorney General.

6 (E) The seller grants the purchaser a license to use a trademark
7 that is registered under federal law.

8 (F) It is not an agreement or arrangement encouraging a
9 distributor to recruit others to participate in the program and
10 compensating the distributor for recruiting others into the program
11 or for sales made by others recruited into the program.

12 (c) “Person” includes an individual, corporation, partnership,
13 limited liability company, joint venture, or any business entity.

14 (d) “Seller” means a person who sells or leases or offers to sell
15 or lease a seller assisted marketing plan and who meets either of
16 the following conditions:

17 (1) Has sold or leased or represents or implies that the seller
18 has sold or leased, whether in California or elsewhere, at least five
19 seller assisted marketing plans within 24 months prior to a
20 solicitation.

21 (2) Intends or represents or implies that the seller intends to sell
22 or lease, whether in California or elsewhere, at least five seller
23 assisted marketing plans within 12 months following a solicitation.

24 For purposes of this title, the seller is the person to whom the
25 purchaser becomes contractually obligated. A “seller” does not
26 include a licensed real estate broker or salesman who engages in
27 the sale or lease of a “business opportunity” as that term is used
28 in Sections 10000 to 10030, inclusive, of the Business and
29 Professions Code, or elsewhere in Chapter 1 (commencing with
30 Section 10000), Chapter 2 (commencing with Section 10050), or
31 Chapter 6 (commencing with Section 10450) of Part 1 of Division
32 4 of the Business and Professions Code.

33 (e) “Purchaser” means a person who is solicited to become
34 obligated or does become obligated on a seller assisted marketing
35 plan contract.

36 (f) “Equipment” includes machines, all electrical devices, video
37 or audio devices, molds, display racks, vending machines, coin
38 operated game machines, machines that dispense products, and
39 display units of all kinds.

1 (g) “Supplies” includes any and all materials used to produce,
2 grow, breed, fabricate, modify, develop, or make any product or
3 item.

4 (h) “Product” includes any tangible chattel, including food or
5 living animals, that the purchaser intends to:

6 (1) Sell or lease.

7 (2) Use to perform a service.

8 (3) Resell or attempt to resell to the seller assisted marketing
9 plan seller.

10 (4) Provide or attempt to provide to the seller assisted marketing
11 plan seller or to any other person whom the seller suggests the
12 purchaser contact so that the seller assisted marketing plan seller
13 or that other person may assist, either directly or indirectly, the
14 purchaser in distributing, selling, leasing, or otherwise disposing
15 of the product.

16 (i) “Services” includes any assistance, guidance, direction, work,
17 labor, or services provided by the seller to initiate or maintain or
18 assist in the initiation or maintenance of a business.

19 (j) “Seller assisted marketing plan contract” or “contract” means
20 any contract or agreement that obligates a purchaser to a seller.

21 (k) “Initial payment” means the total amount a purchaser is
22 obligated to pay to the seller under the terms of the seller assisted
23 marketing plan contract prior to or at the time of delivery of the
24 equipment, supplies, products, or services or within six months of
25 the purchaser commencing operation of the seller assisted
26 marketing plan. If the contract sets forth a specific total sale price
27 for purchase of the seller assisted marketing plan which total price
28 is to be paid partially as a downpayment and then in specific
29 monthly payments, the “initial payment” means the entire total
30 sale price.

31 (l) “Initial cash payment” or “downpayment” means that portion
32 of the initial payment that the purchaser is obligated to pay to the
33 seller prior to or at the time of delivery of equipment, supplies,
34 products, or services. It does not include any amount financed by
35 or for which financing is to be obtained by the seller, or financing
36 that the seller assists in obtaining.

37 (m) “Buy-back” or “secured investment” means any
38 representation that implies in any manner that the purchaser’s
39 initial payment is protected from loss. These terms include a
40 representation or implication of any of the following:

1 (1) That the seller may repurchase either all or part of what it
2 sold to the purchaser.

3 (2) That the seller may at some future time pay the purchaser
4 the difference between what has been earned and the initial
5 payment.

6 (3) That the seller may in the ordinary course buy from the
7 purchaser items made, produced, fabricated, grown, bred, modified,
8 or developed by the purchaser using, in whole or in part, the
9 product, supplies, equipment, or services that were initially sold
10 or leased to the purchaser by the seller.

11 (4) That the seller or a person to whom the seller will refer the
12 purchaser may in the ordinary course sell, lease, or distribute the
13 items the purchaser has for sale or lease.

14 SEC. 6. Section 2923.3 of the Civil Code is amended to read:

15 2923.3. (a) With respect to residential real property containing
16 no more than four dwelling units, a mortgagee, trustee, beneficiary,
17 or authorized agent shall provide to the mortgagor or trustor a copy
18 of the recorded notice of default with an attached separate summary
19 document of the notice of default in English and the languages
20 described in Section 1632, as set forth in subdivision (c), and a
21 copy of the recorded notice of sale with an attached separate
22 summary document of the information required to be contained
23 in the notice of sale in English and the languages described in
24 Section 1632, as set forth in subdivision (d). These summaries are
25 not required to be recorded or published. This subdivision shall
26 become operative on April 1, 2013, or 90 days following the
27 issuance of the translations by the Department of ~~Corporations~~,
28 *Business Oversight* pursuant to subdivision (b), whichever is later.

29 (b) (1) The Department of ~~Corporations~~ *Business Oversight*
30 shall provide a standard translation of the statement in paragraph
31 (1) of subdivision (c), and of the summary of the notice of default,
32 as set forth in paragraph (2) of subdivision (c) in the languages
33 described in Section 1632.

34 (2) The Department of ~~Corporations~~ *Business Oversight* shall
35 provide a standard translation of the statement in paragraph (1) of
36 subdivision (d), and of the summary of the notice of sale, as set
37 forth in paragraph (2) of subdivision (d).

38 (3) The department shall make the translations described in
39 paragraphs (1) and (2) available without charge on its Internet Web
40 site. Any mortgagee, trustee, beneficiary, or authorized agent who

1 provides the department's translations in the manner prescribed
2 by this section shall be in compliance with this section.

3 (c) (1) The following statement shall appear in the languages
4 described in Section 1632 at the beginning of the notice of default:

5
6 NOTE: THERE IS A SUMMARY OF THE INFORMATION
7 IN THIS DOCUMENT ATTACHED.

8
9 (2) The following summary of key information shall be attached
10 to the copy of the notice of default provided to the mortgagor or
11 trustor:

12
13 SUMMARY OF KEY INFORMATION

14 The attached notice of default was sent to [name of the trustor],
15 in relation to [description of the property that secures the mortgage
16 or deed of trust in default]. This property may be sold to satisfy
17 your obligation and any other obligation secured by the deed of
18 trust or mortgage that is in default. [Trustor] has, as described in
19 the notice of default, breached the mortgage or deed of trust on
20 the property described above.

21 IMPORTANT NOTICE: IF YOUR PROPERTY IS IN
22 FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR
23 PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT
24 ACTION, and you may have the legal right to bring your account
25 in good standing by paying all of your past due payments plus
26 permitted costs and expenses within the time permitted by law for
27 reinstatement of your account, which is normally five business
28 days prior to the date set for the sale of your property. No sale date
29 may be set until approximately 90 days from the date the attached
30 notice of default may be recorded (which date of recordation
31 appears on the notice).

32 This amount is _____ as of ____ (date) _____ and
33 will increase until your account becomes current.

34 While your property is in foreclosure, you still must pay other
35 obligations (such as insurance and taxes) required by your note
36 and deed of trust or mortgage. If you fail to make future payments
37 on the loan, pay taxes on the property, provide insurance on the
38 property, or pay other obligations as required in the note and deed
39 of trust or mortgage, the beneficiary or mortgagee may insist that
40 you do so in order to reinstate your account in good standing. In

1 addition, the beneficiary or mortgagee may require as a condition
2 to reinstatement that you provide reliable written evidence that
3 you paid all senior liens, property taxes, and hazard insurance
4 premiums.

5 Upon your written request, the beneficiary or mortgagee will
6 give you a written itemization of the entire amount you must pay.
7 You may not have to pay the entire unpaid portion of your account,
8 even though full payment was demanded, but you must pay all
9 amounts in default at the time payment is made. However, you
10 and your beneficiary or mortgagee may mutually agree in writing
11 prior to the time the notice of sale is posted (which may not be
12 earlier than three months after this notice of default is recorded)
13 to, among other things, (1) provide additional time in which to
14 cure the default by transfer of the property or otherwise; or (2)
15 establish a schedule of payments in order to cure your default; or
16 both (1) and (2).

17 Following the expiration of the time period referred to in the
18 first paragraph of this notice, unless the obligation being foreclosed
19 upon or a separate written agreement between you and your creditor
20 permits a longer period, you have only the legal right to stop the
21 sale of your property by paying the entire amount demanded by
22 your creditor.

23 To find out the amount you must pay, or to arrange for payment
24 to stop the foreclosure, or if your property is in foreclosure for any
25 other reason, contact:

26 _____
27 (Name of beneficiary or mortgagee)

28 _____
29 (Mailing address)

30 _____
31 (Telephone)

32 If you have any questions, you should contact a lawyer or the
33 governmental agency which may have insured your loan.

34 Notwithstanding the fact that your property is in foreclosure,
35 you may offer your property for sale, provided the sale is concluded
36 prior to the conclusion of the foreclosure.

37 Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO**
38 **NOT TAKE PROMPT ACTION.**

39 If you would like additional copies of this summary, you may
40 obtain them by calling [insert telephone number].

(d) (1) The following statement shall appear in the languages described in Section 1632 at the beginning of the notice of sale:

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED.

(2) The following summary of key information shall be attached to the copy of the notice of sale provided to the mortgagor or trustor:

SUMMARY OF KEY INFORMATION

The attached notice of sale was sent to [trustor], in relation to [description of the property that secures the mortgage or deed of trust in default].

YOU ARE IN DEFAULT UNDER A (Deed of trust or mortgage) DATED _____. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE.

IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

The total amount due in the notice of sale is _____.

Your property is scheduled to be sold on [insert date and time of sale] at [insert location of sale].

However, the sale date shown on the attached notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call [telephone number for information regarding the trustee's sale] or visit this Internet Web site [Internet Web site address for information regarding the sale of this property], using the file number assigned to this case [case file number]. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best

1 way to verify postponement information is to attend the scheduled
2 sale.

3 If you would like additional copies of this summary, you may
4 obtain them by calling [insert telephone number].

5 (e) Failure to provide these summaries to the mortgagor or
6 trustor shall have the same effect as if the notice of default or notice
7 of sale were incomplete or not provided.

8 (f) This section sets forth a requirement for translation in
9 languages other than English, and a document complying with the
10 provisions of this section may be recorded pursuant to subdivision
11 (b) of Section 27293 of the Government Code. A document that
12 complies with this section shall not be rejected for recordation on
13 the ground that some part of the document is in a language other
14 than English.

15
16 SEC. 7. Section 1101.1 of the Corporations Code is amended
17 to read:

18 1101.1. Subdivision (c) of Section 1113 and ~~the last two~~
19 ~~sentences~~ *subdivision (b)* of Section 1101 do not apply to any
20 transaction if the Commissioner of Corporations, ~~the Commissioner~~
21 ~~of Financial Institutions, Business Oversight,~~ the Insurance
22 Commissioner or, the Public Utilities Commission has approved
23 the terms and conditions of the transaction and the fairness of those
24 terms and conditions pursuant to Section 25142 or Section ~~696.5~~
25 *1209*, 5750, or 5802 of the Financial Code, Section 838.5 of the
26 Insurance Code, or Section 822 of the Public Utilities Code.

27 SEC. 8. Section 2207 of the Corporations Code is amended to
28 read:

29 2207. (a) A corporation is liable for a civil penalty in an
30 amount not exceeding one million dollars (\$1,000,000) if the
31 corporation does both of the following:

32 (1) Has actual knowledge that an officer, director, manager, or
33 agent of the corporation does any of the following:

34 (A) Makes, publishes, or posts, or has made, published, or
35 posted, either generally or privately to the shareholders or other
36 persons, either of the following:

37 (i) An oral, written, or electronically transmitted report, exhibit,
38 notice, or statement of its affairs or pecuniary condition that
39 contains a material statement or omission that is false and intended

1 to give the shares of stock in the corporation a materially greater
2 or a materially less apparent market value than they really possess.

3 (ii) An oral, written, or electronically transmitted report,
4 prospectus, account, or statement of operations, values, business,
5 profits, or expenditures, that includes a material false statement or
6 omission intended to give the shares of stock in the corporation a
7 materially greater or a materially less apparent market value than
8 they really possess.

9 (B) Refuses or has refused to make any book entry or post any
10 notice required by law in the manner required by law.

11 (C) Misstates or conceals or has misstated or concealed from a
12 regulatory body a material fact in order to deceive a regulatory
13 body to avoid a statutory or regulatory duty, or to avoid a statutory
14 or regulatory limit or prohibition.

15 (2) Within 30 days after actual knowledge is acquired of the
16 actions described in paragraph (1), the corporation knowingly fails
17 to do both of the following:

18 (A) Notify the Attorney General or appropriate government
19 agency in writing, unless the corporation has actual knowledge
20 that the Attorney General or appropriate government agency has
21 been notified.

22 (B) Notify its shareholders in writing, unless the corporation
23 has actual knowledge that the shareholders have been notified.

24 (b) The requirement for notification under this section is not
25 applicable if the action taken or about to be taken by the
26 corporation, or by an officer, director, manager, or agent of the
27 corporation under paragraph (1) of subdivision (a), is abated within
28 the time prescribed for reporting, unless the appropriate
29 government agency requires disclosure by regulation.

30 (c) If the action reported to the Attorney General pursuant to
31 this section implicates the government authority of an agency other
32 than the Attorney General, the Attorney General shall promptly
33 forward the written notice to that agency.

34 (d) If the Attorney General was not notified pursuant to
35 subparagraph (A) of paragraph (2) of subdivision (a), but the
36 corporation reasonably and in good faith believed that it had
37 complied with the notification requirements of this section by
38 notifying a government agency listed in paragraph (5) of
39 subdivision (e), no penalties shall apply.

40 (e) For purposes of this section:

1 (1) “Manager” means a person having both of the following:

2 (A) Management authority over a business entity.

3 (B) Significant responsibility for an aspect of a business that
4 includes actual authority for the financial operations or financial
5 transactions of the business.

6 (2) “Agent” means a person or entity authorized by the
7 corporation to make representations to the public about the
8 corporation’s financial condition and who is acting within the
9 scope of the agency when the representations are made.

10 (3) “Shareholder” means a person or entity that is a shareholder
11 of the corporation at the time the disclosure is required pursuant
12 to subparagraph (B) of paragraph (2) of subdivision (a).

13 (4) “Notify its shareholders” means to give sufficient description
14 of an action taken or about to be taken that would constitute acts
15 or omissions as described in paragraph (1) of subdivision (a). A
16 notice or report filed by a corporation with the United States
17 Securities and Exchange Commission that relates to the facts and
18 circumstances giving rise to an obligation under paragraph (1) of
19 subdivision (a) shall satisfy all notice requirements arising under
20 paragraph (2) of subdivision (a), but shall not be the exclusive
21 means of satisfying the notice requirements, provided that the
22 Attorney General or appropriate agency is informed in writing that
23 the filing has been made together with a copy of the filing or an
24 electronic link where it is available online without charge.

25 (5) “Appropriate government agency” means an agency on the
26 following list that has regulatory authority with respect to the
27 financial operations of a corporation:

28 (A) Department of ~~Corporations~~. *Business Oversight*.

29 (B) Department of Insurance.

30 ~~(C) Department of Financial Institutions.~~

31 ~~(D)~~

32 (C) Department of Managed Health Care.

33 ~~(E)~~

34 (D) United States Securities and Exchange Commission.

35 (6) “Actual knowledge of the corporation” means the knowledge
36 an officer or director of a corporation actually possesses or does
37 not consciously avoid possessing, based on an evaluation of
38 information provided pursuant to the corporation’s disclosure
39 controls and procedures.

1 (7) “Refuse to make a book entry” means the intentional decision
2 not to record an accounting transaction when all of the following
3 conditions are satisfied:

4 (A) The independent auditors required recordation of an
5 accounting transaction during the course of an audit.

6 (B) The audit committee of the corporation has not approved
7 the independent auditor’s recommendation.

8 (C) The decision is made for the primary purpose of rendering
9 the financial statements materially false or misleading.

10 (8) “Refuse to post any notice required by law” means an
11 intentional decision not to post a notice required by law when all
12 of the following conditions exist:

13 (A) The decision not to post the notice has not been approved
14 by the corporation’s audit committee.

15 (B) The decision is intended to give the shares of stock in the
16 corporation a materially greater or a materially less apparent market
17 value than they really possess.

18 (9) “Misstate or conceal material facts from a regulatory body”
19 means an intentional decision not to disclose material facts when
20 all of the following conditions exist:

21 (A) The decision not to disclose material facts has not been
22 approved by the corporation’s audit committee.

23 (B) The decision is intended to give the shares of stock in the
24 corporation a materially greater or a materially less apparent market
25 value than they really possess.

26 (10) “Material false statement or omission” means an untrue
27 statement of material fact or an omission to state a material fact
28 necessary in order to make the statements made under the
29 circumstances under which they were made not misleading.

30 (11) “Officer” means any person as set forth in Rule 16A-1
31 promulgated under the Securities Exchange Act of 1934 or any
32 successor regulation thereto, except an officer of a subsidiary
33 corporation who is not also an officer of the parent corporation.

34 (f) This section only applies to corporations that are issuers, as
35 defined in Section 2 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
36 Sec. 7201 and following).

37 (g) An action to enforce this section may only be brought by
38 the Attorney General or a district attorney or city attorney in the
39 name of the people of the State of California.

1 SEC. 9. Section 2510 of the Corporations Code is amended to
2 read:

3 2510. “Social purpose corporation subject to the Banking Law”
4 means any of the following:

5 (a) A social purpose corporation that, with the approval of the
6 Commissioner of ~~Financial Institutions~~, *Business Oversight*, is
7 incorporated for the purpose of engaging in, or that is authorized
8 by the Commissioner of ~~Financial Institutions~~ *Business Oversight*
9 to engage in, the commercial banking business under the Banking
10 Law (Division 1 (commencing with Section 99) of the Financial
11 Code).

12 (b) Any social purpose corporation that, with the approval of
13 the Commissioner of ~~Financial Institutions~~, *Business Oversight*,
14 is incorporated for the purpose of engaging in, or that is authorized
15 by the Commissioner of ~~Financial Institutions~~ *Business Oversight*
16 to engage in, the industrial banking business under the Banking
17 Law (Division 1 (commencing with Section 99) of the Financial
18 Code).

19 (c) Any social purpose corporation, other than a social purpose
20 corporation described in subdivision (d), that, with the approval
21 of the Commissioner of ~~Financial Institutions~~, *Business Oversight*,
22 is incorporated for the purpose of engaging in, or that is authorized
23 by the Commissioner of ~~Financial Institutions~~ *Business Oversight*
24 to engage in, the trust business under the Banking Law (Division
25 1 (commencing with Section 99) of the Financial Code).

26 (d) Any social purpose corporation that is authorized by the
27 Commissioner of ~~Financial Institutions~~ *Business Oversight* and
28 the Commissioner of Insurance to maintain a title insurance
29 department to engage in title insurance business and a trust
30 department to engage in trust business.

31 (e) Any social purpose corporation that, with the approval of
32 the Commissioner of ~~Financial Institutions~~, *Business Oversight*,
33 is incorporated for the purpose of engaging in, or that is authorized
34 by the Commissioner of ~~Financial Institutions~~ *Business Oversight*
35 to engage in, business under Article 1 (commencing with Section
36 3500) of Chapter 19 of Division 1 of the Financial Code.

37 SEC. 10. Section 3100 of the Corporations Code is amended
38 to read:

39 3100. (a) A social purpose corporation may sell, lease, convey,
40 exchange, transfer, or otherwise dispose of all or substantially all

1 of its assets when the principal terms of the transaction are
 2 approved by the board and are approved by an affirmative vote of
 3 at least two-thirds of the outstanding shares of each class, or a
 4 greater vote if required in the articles, regardless of whether that
 5 class is entitled to vote thereon by the provisions of the articles,
 6 either before or after approval by the board and before the
 7 transaction. A transaction constituting a reorganization shall be
 8 subject to Chapter 12 (commencing with Section 1200) of Division
 9 1 and Chapter 10 (commencing with Section 3400) of this division
 10 and shall not be subject to this section, other than subdivision (d).
 11 A transaction constituting a conversion shall be subject to Chapter
 12 11.5 (commencing with Section 1150) of Division 1 and Chapter
 13 9 (commencing with Section 3300) of this division and shall not
 14 be subject to this section.

15 (b) Notwithstanding approval of two-thirds of the outstanding
 16 shares, the board may abandon the proposed transaction without
 17 further action by the shareholders, subject to the contractual rights,
 18 if any, of third parties.

19 (c) The sale, lease, conveyance, exchange, transfer, or other
 20 disposition may be made upon those terms and conditions and for
 21 that consideration as the board may deem in the best interests of
 22 the social purpose corporation. The consideration may be money,
 23 securities, or other property.

24 (d) If the acquiring party in a transaction pursuant to subdivision
 25 (a) or subdivision (g) of Section 2001 is in control of or under
 26 common control with the disposing social purpose corporation,
 27 the principal terms of the sale shall be approved by at least 90
 28 percent of the voting power of the disposing social purpose
 29 corporation unless the disposition is to a domestic or foreign other
 30 business entity or social purpose corporation, the articles of
 31 incorporation of which specify materially the same purposes, in
 32 consideration of the nonredeemable common shares or
 33 nonredeemable equity securities of the acquiring party or its parent.

34 (e) Subdivision (d) shall not apply to a transaction if the
 35 ~~Commissioner of Corporations, the Commissioner of Financial~~
 36 ~~Institutions, Business Oversight,~~ the Insurance Commissioner, or
 37 the Public Utilities Commission has approved the terms and
 38 conditions of the transaction and the fairness of those terms and
 39 conditions pursuant to Section 25142, Section ~~696.5~~ 1209 of the

1 Financial Code, Section 838.5 of the Insurance Code, or Section
2 822 of the Public Utilities Code.

3 SEC. 11. Section 17713.12 of the Corporations Code is
4 amended to read:

5 17713.12. (a) A limited liability company is liable for a civil
6 penalty in an amount not exceeding one million dollars
7 (\$1,000,000) if the limited liability company does both of the
8 following:

9 (1) Has actual knowledge that a member, officer, manager, or
10 agent of the limited liability company does any of the following:

11 (A) Makes, publishes, or posts, or has made, published, or
12 posted, either generally or privately to the shareholders or other
13 persons, either of the following:

14 (i) An oral, written, or electronically transmitted report, exhibit,
15 notice, or statement of its affairs or pecuniary condition that
16 contains a material statement or omission that is false and intended
17 to give membership shares in the limited liability company a
18 materially greater or a materially less apparent market value than
19 they really possess.

20 (ii) An oral, written, or electronically transmitted report,
21 prospectus, account, or statement of operations, values, business,
22 profits, or expenditures that includes a material false statement or
23 omission intended to give membership shares in the limited liability
24 company a materially greater or a materially less apparent market
25 value than they really possess.

26 (B) Refuses or has refused to make any book entry or post any
27 notice required by law in the manner required by law.

28 (C) Misstates or conceals or has misstated or concealed from a
29 regulatory body a material fact in order to deceive a regulatory
30 body to avoid a statutory or regulatory duty, or to avoid a statutory
31 or regulatory limit or prohibition.

32 (2) Within 30 days after actual knowledge is acquired of the
33 actions described in paragraph (1), the limited liability company
34 knowingly fails to do both of the following:

35 (A) Notify the Attorney General or appropriate government
36 agency in writing, unless the limited liability company has actual
37 knowledge that the Attorney General or appropriate government
38 agency has been notified.

1 (B) Notify its members and investors in writing, unless the
2 limited liability company has actual knowledge that the members
3 and investors have been notified.

4 (b) The requirement for notification under this section is not
5 applicable if the action taken or about to be taken by the limited
6 liability company, or by a member, officer, manager, or agent of
7 the limited liability company under paragraph (1) of subdivision
8 (a), is abated within the time prescribed for reporting, unless the
9 appropriate government agency requires disclosure by regulation.

10 (c) If the action reported to the Attorney General pursuant to
11 this section implicates the government authority of an agency other
12 than the Attorney General, the Attorney General shall promptly
13 forward the written notice to that agency.

14 (d) If the Attorney General was not notified pursuant to
15 subparagraph (A) of paragraph (2) of subdivision (a), but the
16 limited liability company reasonably and in good faith believed
17 that it had complied with the notification requirements of this
18 section by notifying a government agency listed in paragraph (5)
19 of subdivision (e), no penalties shall apply.

20 (e) For purposes of this section:

21 (1) “Manager” means a person defined by subdivision (m) of
22 Section 17701.01 having both of the following:

23 (A) Management authority over the limited liability company.

24 (B) Significant responsibility for an aspect of the limited liability
25 company that includes actual authority for the financial operations
26 or financial transactions of the limited liability company.

27 (2) “Agent” means a person or entity authorized by the limited
28 liability company to make representations to the public about the
29 limited liability company’s financial condition and who is acting
30 within the scope of the agency when the representations are made.

31 (3) “Member” means a person as defined by subdivision (o) of
32 Section 17701.01 that is a member of the limited liability company
33 at the time the disclosure is required pursuant to subparagraph (B)
34 of paragraph (2) of subdivision (a).

35 (4) “Notify its members” means to give sufficient description
36 of an action taken or about to be taken that would constitute acts
37 or omissions as described in paragraph (1) of subdivision (a). A
38 notice or report filed by a limited liability company with the United
39 States Securities and Exchange Commission that relates to the
40 facts and circumstances giving rise to an obligation under

1 paragraph (1) of subdivision (a) shall satisfy all notice requirements
2 arising under paragraph (2) of subdivision (a) but shall not be the
3 exclusive means of satisfying the notice requirements, provided
4 that the Attorney General or appropriate agency is informed in
5 writing that the filing has been made together with a copy of the
6 filing or an electronic link where it is available online without
7 charge.

8 (5) “Appropriate government agency” means an agency on the
9 following list that has regulatory authority with respect to the
10 financial operations of a limited liability company:

11 (A) Department of ~~Corporations~~. *Business Oversight*.

12 (B) Department of Insurance.

13 ~~(C) Department of Financial Institutions.~~

14 ~~(D)~~

15 (C) Department of Managed Health Care.

16 ~~(E)~~

17 (D) United States Securities and Exchange Commission.

18 (6) “Actual knowledge of the limited liability company” means
19 the knowledge a member, officer, or manager of a limited liability
20 company actually possesses or does not consciously avoid
21 possessing, based on an evaluation of information provided
22 pursuant to the limited liability company’s disclosure controls and
23 procedures.

24 (7) “Refuse to make a book entry” means the intentional decision
25 not to record an accounting transaction when all of the following
26 conditions are satisfied:

27 (A) The independent auditors required recordation of an
28 accounting transaction during the course of an audit.

29 (B) The audit committee of the limited liability company has
30 not approved the independent auditor’s recommendation.

31 (C) The decision is made for the primary purpose of rendering
32 the financial statements materially false or misleading.

33 (8) “Refuse to post any notice required by law” means an
34 intentional decision not to post a notice required by law when all
35 of the following conditions exist:

36 (A) The decision not to post the notice has not been approved
37 by the limited liability company’s audit committee.

38 (B) The decision is intended to give the membership shares in
39 the limited liability company a materially greater or a materially
40 less apparent market value than they really possess.

1 (9) “Misstate or conceal material facts from a regulatory body”
2 means an intentional decision not to disclose material facts when
3 all of the following conditions exist:

4 (A) The decision not to disclose material facts has not been
5 approved by the limited liability company’s audit committee.

6 (B) The decision is intended to give the membership shares in
7 the limited liability company a materially greater or a materially
8 less apparent market value than they really possess.

9 (10) “Material false statement or omission” means an untrue
10 statement of material fact or an omission to state a material fact
11 necessary in order to make the statements made under the
12 circumstances under which they were made not misleading.

13 (11) “Officer” means a person appointed pursuant to Section
14 17703.02, except an officer of a specified subsidiary limited
15 liability company who is not also an officer of the parent limited
16 liability company.

17 (f) This section only applies to limited liability companies that
18 are issuers, as defined in Section 2 of the federal Sarbanes-Oxley
19 Act of 2002 (15 U.S.C. Sec. 7201 et seq.).

20 (g) An action to enforce this section may only be brought by
21 the Attorney General or a district attorney or city attorney in the
22 name of the people of the State of California.

23 SEC. 12. Section 25207 of the Corporations Code is amended
24 to read:

25 25207. A financial institution that undertakes activities with
26 respect to an investment company pursuant to the provisions of
27 Section ~~4338~~, 1514, 6524, 14652.5, or 18022.5 of the Financial
28 Code shall not be subject to Section 25210 or 25230 in connection
29 with such activities but shall be subject to Sections 25218, 25234,
30 25235, and 25237 and to subdivisions (a), (b), and (d) of Section
31 25216, and such rules thereunder as the commissioner may specify
32 by rule. Nothing in this section shall affect the status of such a
33 financial institution as a broker-dealer or investment adviser, or
34 the employees of such persons, when engaged in the activities
35 authorized by the provisions of the Financial Code specified above.

36 SEC. 13. Section 25243.5 of the Corporations Code is amended
37 to read:

38 25243.5. (a) A broker-dealer or investment adviser, or an agent
39 or representative thereof, shall not use a senior-specific
40 certification, credential, or professional designation in connection

1 with the offer, sale, or purchase of securities, or the provision of
2 advice as to the value of or the advisability of investing in,
3 purchasing, or selling securities, either directly or indirectly or
4 through publications or writings or by issuing or promulgating
5 analyses or reports relating to securities, that indicates or implies
6 that the broker-dealer, investment adviser, or an agent or
7 representative thereof, has special certification or training in
8 advising or servicing senior citizens or retirees, in such a way as
9 to mislead any person.

10 (b) The prohibited use of these certifications, credentials, or
11 professional designations includes, but is not limited to, the
12 following:

13 (1) The use of a certification, credential, or professional
14 designation by a person who has not actually earned or is otherwise
15 ineligible to use the certification, credential, or designation.

16 (2) The use of a nonexistent or self-conferred certification,
17 credential, or professional designation.

18 (3) The use of a certification, credential, or professional
19 designation that indicates or implies a level of occupational
20 qualifications obtained through education, training, or experience
21 that the person using the certification, credential, or professional
22 designation does not have.

23 (4) The use of a certification, credential, or professional
24 designation that was obtained from a designating, credentialing,
25 or certifying organization where any of the following apply:

26 (A) The organization is primarily engaged in the business of
27 instruction in sales marketing.

28 (B) The organization does not have reasonable standards or
29 procedures for assuring the competency of individuals to whom
30 it grants a certification, credential, or professional designation.

31 (C) The organization does not have reasonable standards or
32 procedures for monitoring and disciplining individuals with a
33 certification, credential, or professional designation for improper
34 or unethical conduct.

35 (D) The organization does not have reasonable continuing
36 education requirements for individuals with a certification,
37 credential, or professional designation in order to maintain the
38 certificate, credential, or professional designation.

39 (c) There is a rebuttable presumption that a designating,
40 credentialing, or certifying organization is not disqualified solely

1 for the purposes of paragraph (4) of subdivision (b) when the
2 organization has been accredited by the American National
3 Standards Institute, the National Commission for Certifying
4 Agencies, or an organization that is on the United States
5 Department of Education's list entitled "Accrediting Agencies
6 Recognized for Title IV Purposes" and the certification, credential,
7 or professional designation issued therefrom does not primarily
8 apply to sales and/or marketing.

9 (d) In determining whether a combination of words, or an
10 acronym standing for a combination of words, constitutes a
11 certification, credential, or professional designation indicating or
12 implying that a person has special certification or training in
13 advising or serving senior citizens or retirees, factors to be
14 considered shall include both of the following:

15 (1) Use of one or more word such as "senior," "retirement,"
16 "elder," or like words combined with one or more words such as
17 "certified," "registered," "chartered," "adviser," "specialist,"
18 "consultant," "planner," or like words, in the name of the
19 certification, credential, or professional designation or credential.

20 (2) The manner in which those words are combined.

21 (e) This section shall not apply to the use of a job title by a
22 person within an organization that is licensed or registered by the
23 Department of ~~Corporations~~ *Business Oversight* or a federal
24 financial services regulatory agency, when that job title indicates
25 seniority or standing within the organization, or specifies a person's
26 area of specialization within the organization. For the purposes of
27 this subdivision, federal financial services regulatory agency
28 includes, but is not limited to, an agency that regulates brokers or
29 dealers, investment advisers, or investment companies as described
30 under the Investment Company Act of 1940 (15 U.S.C. Sec. 809-1
31 et seq.).

32 (f) (1) This section shall not apply to a broker or agent who is
33 licensed by the Department of Insurance and is in compliance with
34 the requirements of Section 787.1 of the Insurance Code.

35 (2) This subdivision shall be operative only if Assembly Bill
36 2150 of the 2007–08 Regular Session is chaptered and becomes
37 effective and that bill adds Section 787.1 to the Insurance Code.

38 (g) This section shall become operative on July 1, 2009.

39 SEC. 14. Section 25247 of the Corporations Code is amended
40 to read:

1 25247. (a) Upon written or oral request, the commissioner
2 shall make available to any person the information specified in
3 Section 6254.12 of the Government Code and made available
4 through the Public Disclosure Program of the Financial Industry
5 Regulatory Authority with respect to any broker-dealer or agent
6 licensed or regulated under this part. The commissioner shall also
7 make available the current license status and the year of issuance
8 of the license of a broker-dealer. Any information disclosed
9 pursuant to this subdivision shall constitute a public record.
10 Notwithstanding any other provisions of law, the commissioner
11 may disclose either orally or in writing that information pursuant
12 to this subdivision. There shall be no liability on the part of and
13 no cause of action of any nature shall arise against the State of
14 California, the Department of ~~Corporations~~, *Business Oversight*,
15 the Commissioner of ~~Corporations~~, *Business Oversight*, or any
16 officer, agent, or employee of the state or of the Department of
17 ~~Corporations~~ *Business Oversight* for the release of any false or
18 unauthorized information, unless the release of that information
19 was done with knowledge and malice.

20 (b) Any broker-dealer or agent licensed or regulated under this
21 part shall upon request deliver a written notice to any client when
22 a new account is opened stating that information about the license
23 status or disciplinary record of a broker-dealer or an agent may be
24 obtained from the Department of Corporations, or from any other
25 source that provides substantially similar information.

26 (c) The notice provided under subdivision (b) shall contain the
27 office location or telephone number where the information may
28 be obtained.

29 (d) A broker-dealer or agent shall be exempt from providing
30 the notice required under subdivision (b) if a person who does not
31 have a financial relationship with the broker-dealer or agent,
32 requests only general operational information such as the nature
33 of the broker-dealer's or agent's business, office location, hours
34 of operation, basic services, and fees, but does not solicit advice
35 regarding investments or other services offered.

36 (e) Upon written or oral request, the commissioner shall make
37 available to any person the disciplinary records maintained on the
38 Investment Adviser Registration Depository and made available
39 through the Investment Advisor Public Disclosure Web site with
40 respect to any investment adviser, investment adviser

1 representative, or associated person of an investment adviser
2 licensed or regulated under this part. The commissioner shall also
3 make available the current license status and the year of issuance
4 of the license of an investment adviser. Any information disclosed
5 pursuant to this subdivision shall constitute a public record.
6 Notwithstanding any other provision of law, the commissioner
7 may disclose that information either orally or in writing pursuant
8 to this subdivision. There shall be no liability on the part of and
9 no cause of action of any nature shall arise against the State of
10 California, the Department of ~~Corporations~~, *Business Oversight*,
11 the Commissioner of ~~Corporations~~, *Business Oversight*, or any
12 officer, agent, or employee of the state or of the Department of
13 ~~Corporations~~ *Business Oversight* for the release of any false or
14 unauthorized information, unless the release of that information
15 was done with knowledge and malice.

16 (f) Section 461 of the Business and Professions Code shall not
17 be applicable to the Department of Corporations when using a
18 national, uniform application adopted or approved for use by the
19 Securities and Exchange Commission, the North American
20 Securities Administrators Association, or the Financial Industry
21 Regulatory Authority that is required for participation in the Central
22 Registration Depository or the Investment Adviser Registration
23 Depository.

24 (g) This section shall not require the disclosure of criminal
25 history record information maintained by the Federal Bureau of
26 Investigation pursuant to Section 534 of Title 28 of the United
27 States Code, and the rules thereunder, or information not otherwise
28 subject to disclosure under the Information Practices Act of 1977.

29 SEC. 15. Section 25254 of the Corporations Code is amended
30 to read:

31 25254. (a) If the commissioner determines it is in the public
32 interest, the commissioner may include in any administrative action
33 brought under this part a claim for ancillary relief, including, but
34 not limited to, a claim for restitution or disgorgement or damages
35 on behalf of the persons injured by the act or practice constituting
36 the subject matter of the action, and the administrative law judge
37 shall have jurisdiction to award additional relief.

38 (b) In an administrative action brought under this part, the
39 commissioner is entitled to recover costs, which in the discretion
40 of the administrative law judge may include an amount representing

1 reasonable attorney's fees and investigative expenses for the
2 services rendered, for deposit into the State Corporations Fund for
3 the use of the Department of ~~Corporations~~ *Business Oversight*.

4 (c) After the exhaustion of the review procedures provided in
5 accordance with the provisions of the Administrative Procedure
6 Act, Chapter 5 (commencing with Section 11500) of Part 1 of
7 Division 3 of Title 2 of the Government Code, the commissioner
8 may apply to the appropriate superior court for a judgment in the
9 amount of the administrative penalty and costs awarded in a final
10 decision and order compelling the respondent, or the named or
11 cited person, to comply with the final decision of the commissioner
12 brought under this division. The application shall include a certified
13 copy of the final decision of the commission and shall constitute
14 a sufficient showing to warrant the issuance of the judgment and
15 order from superior court.

16 SEC. 16. Section 25401 of the Corporations Code is amended
17 to read:

18 25401. It is unlawful for ~~any person, in connection with the~~
19 ~~offer, sale, or purchase of a security, directly or indirectly, to do~~
20 ~~any of the following:~~

21 ~~(a) Employ a device, scheme, or artifice to defraud.~~

22 ~~(b) Make an untrue statement of material fact or omit to state~~
23 ~~a material fact necessary to make the statements made, in light of~~
24 ~~the circumstances under which they were made, not misleading.~~

25 ~~(c) Engage in an act, practice, or course of business that operates~~
26 ~~or would operate as a fraud or deceit upon another person: any~~
27 ~~person to offer or sell a security in this state, or to buy or offer to~~
28 ~~buy a security in this state, by means of any written or oral~~
29 ~~communication that includes an untrue statement of a material~~
30 ~~fact or omits to state a material fact necessary to make the~~
31 ~~statements made, in the light of the circumstances under which~~
32 ~~the statements were made, not misleading.~~

33 SEC. 17. Section 25604 of the Corporations Code is amended
34 to read:

35 25604. The administration and enforcement of, and the
36 education of the public relative to, the laws and programs of the
37 Department of ~~Corporations~~ *Business Oversight* shall be supported
38 from the State Corporations Fund. Funds appropriated from the
39 State Corporations Fund and made available for expenditure for

1 any law or program of the department may come from fees
2 collected from the following:

3 (a) Section 25608, except for fees collected pursuant to
4 subdivisions (o) to (r), inclusive, of Section 25608.

5 (b) Section 25608.1.

6 SEC. 18. Section 25607 of the Corporations Code is amended
7 to read:

8 25607. (a) Neither the commissioner nor any of the
9 commissioner's assistants, clerks, or deputies shall be interested
10 as a director, officer, shareholder, member (other than a member
11 of an organization formed for religious purposes), partner, agent,
12 or employee of any person who, during the period of the official's
13 or employee's association with the Department of ~~Corporations~~,
14 *Business Oversight*, (1) was licensed or applied for license as a
15 broker-dealer or investment adviser under this division, or (2)
16 applied for or secured the qualification of the sale of securities
17 under this division.

18 (b) Nothing contained in subdivision (a) shall prohibit the
19 holding or purchasing of any securities by any assistant, clerk, or
20 deputy in accordance with rules as the commissioner shall adopt
21 for the purpose of protecting the public interest and avoiding
22 conflicts of interest.

23 (c) Nothing contained in subdivision (a) shall prohibit the
24 holding or purchasing of any securities by the commissioner if any
25 of the following criteria is met:

26 (1) The securities held or purchased by the commissioner are
27 exempt from the qualification requirements of Sections 25110,
28 25120, and 25130 by virtue of Section 25100, provided that the
29 holding or purchasing of those securities is in accordance with
30 rules adopted for the purpose of protecting the public interest and
31 avoiding conflicts of interest.

32 (2) The securities held or purchased by the commissioner are
33 not subject to Sections 25110, 25120, and 25130 by virtue of
34 Section 25100.1, provided that the holding or purchasing of those
35 securities is in accordance with rules adopted for the purpose of
36 protecting the public interest and avoiding conflicts of interest.

37 (3) The holding or purchasing of any securities by the
38 commissioner meets each of the following requirements:

39 (A) The securities are held or purchased through a management
40 account or trust administered by a bank or trust company authorized

1 to do business in this state, and the bank or trust company has sole
2 investment discretion regarding the holding, purchase, and sale of
3 securities.

4 (B) The commissioner did not, directly or indirectly, advise,
5 counsel, command, or suggest the holding, purchase, or sale of
6 any security or furnish any information relating to the security to
7 the bank or trust company.

8 (C) The account or trust does not at any time have more than
9 10 percent of its total assets invested in the securities of any one
10 issuer or hold more than 5 percent of the outstanding shares or
11 units of any class of securities of any one issuer.

12 (D) The commissioner shall report to the Attorney General not
13 less often than quarterly all holdings, purchases, and sales of
14 securities by him or her as authorized in paragraph (3), which
15 reports shall be retained by the Attorney General as public
16 documents.

17 SEC. 19. Section 25612.5 of the Corporations Code is amended
18 to read:

19 25612.5. (a) To encourage uniform interpretation and
20 administration of this law and the Franchise Investment Law
21 (Division 5 (commencing with Section 31000)) and effective
22 securities and franchise regulation and enforcement, the
23 commissioner may cooperate with the securities agencies or
24 administrators of one or more states, Canadian provinces or
25 territories, or other countries, the Securities and Exchange
26 Commission, the Commodity Futures Trading Commission, the
27 Securities Investor Protection Corporation, any self-regulatory
28 organization, any national or international organization or securities
29 officials or agencies, and any governmental law enforcement or
30 regulatory agency.

31 (b) The cooperation authorized by subdivision (a) includes, but
32 is not limited to, the following actions:

33 (1) Prescribing rules and forms with a view to achieving
34 maximum uniformity in the form and content of registration
35 statements, applications, and reports wherever practicable.

36 (2) Participating in a nationwide central depository for
37 qualification or registration of securities under this law and for
38 documents or records required or allowed to be maintained under
39 this law.

1 (3) Participating in the Central Registration Depository, or any
2 successor or alternative nationwide or regional depository, for the
3 registering, certifying, or licensing of broker-dealers or agents, or
4 both.

5 (4) Participating in the Investment Adviser Registration
6 Depository, or any successor or alternative nationwide or regional
7 depository, for the registering, certifying, or licensing of investment
8 advisers or investment adviser representatives, or both.

9 (5) Cooperating in any regulatory activity necessary in the
10 administration of the Uniting and Strengthening America by
11 Providing Appropriate Tools Required to Intercept and Obstruct
12 Terrorism Act of 2001 (Public Law 107-56; USA Patriot Act),
13 consistent with state law.

14 (c) Notwithstanding any other provision of law, any application
15 for qualification, amendment to the application or related securities
16 qualification or registration document or notice under Sections
17 25100.1, 25101.1, 25102, 25102.1, 25110, 25120, 25130, and
18 25230.1 or record otherwise required to be signed that is filed in
19 this state as an electronic record pursuant to a nationwide central
20 depository for qualification or registration of securities, or any
21 electronic record filed through the Central Registration Depository
22 or the Investment Adviser Registration Depository, shall be deemed
23 to be a valid original document upon reproduction to paper form
24 by the Department of ~~Corporations~~ *Business Oversight*.

25 (d) For purposes of this section, “electronic record” has the
26 same meaning as in subdivision (g) of Section 1633.2 of the Civil
27 Code.

28 SEC. 20. Section 25614 of the Corporations Code is amended
29 to read:

30 25614. All rules of the commissioner (other than those relating
31 solely to the internal administration of the Department of
32 ~~Corporations~~ *Business Oversight*) shall be made, amended or
33 rescinded in accordance with the provisions of the Administrative
34 Procedure Act, Chapter 4 (commencing with Section 11370) of
35 Part 1 of Division 3 of Title 2 of the Government Code. Rules may
36 be adopted prior to the effective date of this law to become
37 effective upon its effective date.

38 SEC. 21. Section 25702 of the Corporations Code is amended
39 to read:

1 25702. Whenever a person is entitled under this law to a hearing
2 in accordance with the provisions of the Administrative Procedure
3 Act, Chapter 5 (commencing with Section 11500) of Part 1 of
4 Division 3 of Title 2 of the Government Code, a formal hearing
5 before the Department of ~~Corporations~~ *Business Oversight* may
6 be substituted with the consent of such person and of the
7 commissioner for such hearing before an independent hearing
8 officer; and in that case after such hearing before the Department
9 of ~~Corporations~~ *Business Oversight* such person shall not be
10 entitled to any further administrative remedy.

11 SEC. 22. Section 29542 of the Corporations Code is amended
12 to read:

13 29542. (a) If, in the opinion of the commissioner, any person
14 is engaging in any activity in violation of any provision of this
15 law, or rule or order under this law, the commissioner may order
16 the person to desist and refrain from the activity unless and until
17 the activity will not be in violation of any provision of this law or
18 any rule or order under this law.

19 (b) If after an order has been made under subdivision (a), a
20 request for hearing is filed in writing within ~~one year~~ *30 days* of
21 the date of service of the order by the person to whom the order
22 was directed, a hearing shall be held in accordance with the
23 Administrative Procedure Act (Chapter 5, (commencing with
24 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
25 Code), and the commissioner shall have all of the powers granted
26 under the Administrative Procedure Act. Unless the hearing is
27 commenced within 15 business days after the request is filed (or
28 the person affected consents to a later date), the order is rescinded.

29 If that person fails to file a written request for a hearing within
30 30 days from the date of service of the order, the order shall be
31 deemed a final order of the commissioner and shall not be subject
32 to review by any court or agency, notwithstanding Section 29563.

33 SEC. 23. Section 31408 of the Corporations Code is amended
34 to read:

35 31408. (a) If the commissioner determines it is in the public
36 interest, the commissioner may include in any administrative action
37 brought under this division, including a stop order, a claim for
38 ancillary relief, including, but not limited to, a claim for rescission,
39 restitution or disgorgement or damages on behalf of the persons
40 injured by the act or practice constituting the subject matter of the

1 action, and the administrative law judge shall have jurisdiction to
2 award additional relief. The person affected may be required to
3 attend remedial education, as directed by the commissioner.

4 (b) In an administrative action brought under this part the
5 commissioner is entitled to recover costs, which in the discretion
6 of the administrative law judge may include any amount
7 representing reasonable attorney's fees and investigative expenses
8 for the services rendered, for deposit into the State Corporations
9 Fund for the use of the Department of ~~Corporations~~. *Business*
10 *Oversight*.

11 SEC. 24. Section 31503 of the Corporations Code is amended
12 to read:

13 31503. All rules of the commissioner, other than those relating
14 solely to the internal administration of the Department of
15 ~~Corporations~~, *Business Oversight*, shall be made, amended or
16 rescinded in accordance with the provisions of Chapter 4.5
17 (commencing with Section 11371) of Part 1 of Division 3 of Title
18 2 of the Government Code.

19 SEC. 25. Section 31513 of the Corporations Code is amended
20 to read:

21 31513. Whenever a person is entitled under this law to a hearing
22 in accordance with the provisions of Chapter 5 (commencing with
23 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
24 Code, a formal hearing before the Department of ~~Corporations~~
25 *Business Oversight* may be substituted with the consent of such
26 person and of the commissioner for such hearing before an
27 independent hearing officer; and in that case after such hearing
28 before the Department of ~~Corporations~~ *Business Oversight* such
29 person shall not be entitled to any further administrative remedy.

30 SEC. 26. Section 620 of the Financial Code is amended to read:

31 620. If the licensee whose property and business has been taken
32 pursuant to Section 592 is insured by a Federal Insurance Agency,
33 the commissioner may tender to the appropriate Federal Insurance
34 Agency an appointment as conservator, liquidator, or receiver of
35 the licensee. The commissioner shall determine whether the
36 licensee whose property and business has been taken shall be
37 liquidated or conserved. If the Federal Insurance Agency accepts
38 the appointment, the Federal Insurance Agency shall have, in
39 addition to any powers conferred by applicable federal law, the

1 powers conferred on the commissioner pursuant to this ~~article~~.
2 ~~chapter~~.

3 SEC. 27. Section 622 of the Financial Code is amended to read:

4 622. If the Federal Insurance Agency accepts the appointment
5 in accordance with Section ~~621~~, 620, the rights of customers and
6 other creditors of the insured licensee shall be determined in
7 accordance with the applicable provisions of the laws of this state.

8 SEC. 28. The heading of Article 4 (commencing with Section
9 670) of Chapter 7 of Division 1 of the Financial Code is amended
10 to read:

11
12 Article 4. ~~Conservatorship and Liquidation of a Bank and~~
13 Liquidation of an Uninsured Licensee
14

15 SEC. 29. Section 1008 of the Financial Code is repealed.

16 ~~1008. The amount of funds of a bank or trust company that are~~
17 ~~deposited in any other financial institution (other than a Federal~~
18 ~~Reserve bank) shall not at any time exceed 10 percent of the sum~~
19 ~~of shareholders' equity, allowance for loan and lease losses, capital~~
20 ~~notes, and debentures of the depositing bank or trust company~~
21 ~~unless the financial institution has been designated as a depository~~
22 ~~for the funds of the depositing bank or trust company by a vote of~~
23 ~~the majority of the directors of the depositing bank or trust~~
24 ~~company, and unless the financial institution has been approved~~
25 ~~by the commissioner as a depository for the purposes of this~~
26 ~~section. The commissioner may, in his or her discretion, revoke~~
27 ~~his or her approval of any such depository and may, in his or her~~
28 ~~discretion, limit the amount of funds that may be deposited by any~~
29 ~~bank or trust company with any other financial institution. A~~
30 ~~deposit by one bank or trust company with another financial~~
31 ~~institution shall not be regarded as a loan.~~

32 SEC. 30. Section 1070 of the Financial Code is amended to
33 read:

34 1070. For purposes of this chapter, the following definitions
35 apply:

36 (a) "Automated teller machine" means any electronic
37 information processing device used by a financial institution and
38 its customers for the primary purpose of executing transactions
39 solely between the financial institution and its customers, if the

1 transactions are not incidental to sales between the customer and
2 a business entity other than a financial institution.

3 (b) “Branch office” means any office at which core banking
4 business is conducted other than an automated teller machine, a
5 device used to facilitate check guarantee or check authorization,
6 or a remote service facility as defined in subsection (d) of Section
7 345.12 of Title 12 of the Code of Federal Regulations.

8 (c) “Core banking business” means the business of receiving
9 deposits, paying checks, making loans, and other activities that
10 the commissioner may specify by order or regulation. “Core
11 banking business,” when used to describe the trust business,
12 includes receiving fiduciary assets and administering fiduciary
13 accounts.

14 (d) “Facility,” means an office ~~in this state~~ at which a bank
15 engages in noncore banking business but at which it does not
16 engage in core banking business.

17 (e) “Head office” means the office designated by the bank as
18 its headquarters.

19 (f) “Noncore banking business” means all activities permissible
20 for banks, except core banking business, and except those activities
21 prohibited by law or determined by the commissioner by regulation
22 or order not to be noncore banking business.

23 (g) “Office” means the head office, any branch office, and any
24 facility office of a bank.

25 (h) “Redesignate offices” means (1) the relocation by a bank of
26 its head office to the site of a branch or facility office in this state
27 and the concurrent establishment by the bank of an office at the
28 former site of the head office, or (2) the relocation by a bank of a
29 branch office to the site of a facility office and the concurrent
30 establishment by the bank of a branch or facility office at the
31 former site of the branch office.

32 SEC. 31. Section 2105 of the Financial Code is amended to
33 read:

34 2105. (a) Each licensee or agent shall prominently post on the
35 premises of each branch office that conducts money transmission
36 a notice stating that:

37
38 “If you have complaints with respect to any aspect of the money
39 transmission activities conducted at this location, you may contact the
40 California Department of Business Oversight at its toll-free telephone

1 number, ~~1-800-622-0620~~, 1-866-275-2677, by email at
2 consumer.services@dbo.ca.gov, or by mail at the Department of Business
3 Oversight, Consumer Services, 1515 K Street, Suite 200, Sacramento, CA
4 95814.”
5

6 (b) The commissioner may by order or regulation modify the
7 content of the notice required by this section. This notice shall be
8 printed in English and in the same language principally used by
9 the licensee or any agent of the licensee to advertise, solicit, or
10 negotiate either orally or in writing, with respect to money
11 transmission at that branch office. The information required in this
12 notice shall be clear, legible, and in letters not less than one-half
13 inch in height. The notice shall be posted in a conspicuous location
14 in the unobstructed view of the public within the premises. The
15 licensee shall provide to each of its agents the notice required by
16 this section. In those locations operated by an agent, the agent, and
17 not the licensee, shall be responsible for the failure to properly
18 post the required notice.

19 (c) In the event that a licensee or agent conducts money
20 transmission activity via an Internet Web site or a mobile
21 application that is not in a branch office, the commissioner may
22 authorize an alternative form of the notice required in subdivision
23 (a).

24 SEC. 32. Section 4057 of the Financial Code is amended to
25 read:

26 4057. (a) An entity that negligently discloses or shares
27 nonpublic personal information in violation of this division shall
28 be liable, irrespective of the amount of damages suffered by the
29 consumer as a result of that violation, for a civil penalty not to
30 exceed two thousand five hundred dollars (\$2,500) per violation.
31 However, if the disclosure or sharing results in the release of
32 nonpublic personal information of more than one individual, the
33 total civil penalty awarded pursuant to this subdivision shall not
34 exceed five hundred thousand dollars (\$500,000).

35 (b) An entity that knowingly and willfully obtains, discloses,
36 shares, or uses nonpublic personal information in violation of this
37 division shall be liable for a civil penalty not to exceed two
38 thousand five hundred dollars (\$2,500) per individual violation,
39 irrespective of the amount of damages suffered by the consumer
40 as a result of that violation.

1 (c) In determining the penalty to be assessed pursuant to a
2 violation of this division, the court shall take into account the
3 following factors:

- 4 (1) The total assets and net worth of the violating entity.
5 (2) The nature and seriousness of the violation.
6 (3) The persistence of the violation, including any attempts to
7 correct the situation leading to the violation.
8 (4) The length of time over which the violation occurred.
9 (5) The number of times the entity has violated this division.
10 (6) The harm caused to consumers by the violation.
11 (7) The level of proceeds derived from the violation.
12 (8) The impact of possible penalties on the overall fiscal
13 solvency of the violating entity.

14 (d) In the event a violation of this division results in the identity
15 theft of a consumer, as defined by Section 530.5 of the Penal Code,
16 the civil penalties set forth in this section shall be doubled.

17 (e) The civil penalties provided for in this section shall be
18 exclusively assessed and recovered in a civil action brought in the
19 name of the people of the State of California in any court of
20 competent jurisdiction by any of the following:

- 21 (1) The Attorney General.
22 (2) The functional regulator with jurisdiction over regulation
23 of the financial institution as follows:
24 (A) In the case of banks, savings associations, credit unions,
25 commercial lending companies, and bank holding companies, by
26 the Department of ~~Financial Institutions~~ *Business Oversight,*
27 *Division of Financial Institutions* or the appropriate federal
28 authority; (B) in the case of any person engaged in the business
29 of insurance, by the Department of Insurance; (C) in the case of
30 any investment broker or dealer, investment company, investment
31 advisor, residential mortgage lender or finance lender, by the
32 Department of ~~Corporations~~ *Business Oversight, Division of*
33 *Corporations*; and (D) in the case of a financial institution not
34 subject to the jurisdiction of any functional regulator listed under
35 subparagraphs (A) to (C), inclusive, above, by the Attorney
36 General.

37 SEC. 33. Section 12104 of the Financial Code is amended to
38 read:

12104. A nonprofit community service organization that meets all of the following criteria shall be exempt from any requirements imposed on proraters pursuant to this division:

(a) The nonprofit community service organization incorporates in this state or any other state as a nonprofit corporation and operates pursuant to either the Nonprofit Public Benefit Corporation Law, Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code or the Nonprofit Mutual Benefit Corporation Law, Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code.

(b) The nonprofit community service organization limits its membership to retailers, lenders in the consumer credit field, educators, attorneys, social service organizations, employer and employee organizations, and related groups that serve educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes.

(c) The nonprofit community service organization has as its principal functions the following:

(1) Consumer credit education.

(2) Counseling on consumer credit problems and family budgets.

(3) Arranging or administering debt management plans. "Debt management plan" means a method of paying debtor's obligations in installments on a monthly basis.

(4) Arranging or administering debt settlement plans. "Debt settlement plans" means a method of paying debtor's obligations in a negotiated amount to each creditor on a one-time basis.

(d) The nonprofit community service organization receives from a debtor no more than the following maximum amounts to offset the organization's actual and necessary expenses for the services described in subdivision (c): a one-time sum not to exceed fifty dollars (\$50) for education and counseling combined in connection with debt management or debt settlement services; and for debt management plans, a sum not to exceed 8 percent of the money disbursed monthly, or thirty-five dollars (\$35) per month, whichever is less, and for debt settlement plans a sum not to exceed 15 percent of the amount of the debt forgiven for negotiated debt settlement plans. Nonprofit community service organizations shall not require any upfront payments or deposits on debt settlement plans and may only require payment of fees once the debt has been successfully settled. For purposes of this subdivision, a household

1 shall be considered one debtor. The fees allowed pursuant to this
2 subdivision shall be the only fees that may be charged by a
3 nonprofit community service organization for any services related
4 to a debt management plan or a debt settlement plan.

5 (e) The nonprofit community service organization maintains
6 and keeps current and accurate books, records, and accounts
7 relating to its business in accordance with generally accepted
8 accounting principles, and stores them in a readily accessible place
9 for a period of no less than five years from the end of the fiscal
10 year in which any transactions occurred.

11 (f) The nonprofit community service organization deposits any
12 money received from a debtor for the services described in
13 subdivision (c) in a noninterest-bearing trust account in a federally
14 insured state or federal bank, savings bank, savings and loan
15 association, or credit union, which account is maintained
16 specifically for purposes of administering a debt management plan
17 or debt settlement plan. The nonprofit community service
18 organization shall provide the commissioner the following prior
19 to engaging in business in this state and claiming this exemption:

20 (1) A written notice with the name, address, and telephone
21 number of the bank, savings bank, savings and loan association,
22 or credit union where the trust account is maintained, and the name
23 of the account and the account number. The account information
24 required in this paragraph shall be kept confidential pursuant to
25 the laws governing disclosure of public records, including the
26 California Public Records Act, Chapter 3.5 (commencing with
27 Section 6250) of Division 7 of Title 1 of the Government Code,
28 and the rules adopted thereunder.

29 (2) An irrevocable written consent providing that upon the
30 commissioner taking possession of the property and business of
31 the nonprofit community service organization, all books, records,
32 property and business, including trust accounts and any other
33 accounts holding debtors' funds, shall be immediately turned over
34 to the commissioner or receiver appointed pursuant to this division.
35 The consent shall be signed by the nonprofit community service
36 organization and the bank, savings bank, savings and loan
37 association, or credit union where the trust account is maintained.
38 The consent shall be binding upon the nonprofit community service
39 organization and the bank, savings bank, savings and loan
40 association, or credit union, and any objection to it must be raised

1 pursuant to the laws of the State of California and only in the forum
2 in which the proceeding to take possession or appointment of the
3 receiver has been filed. The nonprofit community service
4 organization and the bank, savings bank, savings and loan
5 association, or credit union shall further consent to the jurisdiction
6 of the commissioner for the purpose of any investigation or
7 proceeding under Sections 12105 and 12106 or any other provision
8 of this division. The consent required by this paragraph shall
9 include the name, title, and signature of an official of the bank,
10 savings bank, savings and loan association, or credit union holding
11 the authority to consent on behalf of that institution, and the name,
12 title, and signature of the chief executive officer or president of
13 the nonprofit community service organization.

14 (g) The nonprofit community service organization maintains at
15 all times a surety bond in the amount of twenty-five thousand
16 dollars (\$25,000), issued by an insurer licensed in this state. The
17 bond shall be conditioned upon the obligor faithfully conforming
18 to and abiding by the provisions of Section 12104 of the Financial
19 Code, honestly and faithfully applying all funds received, honestly
20 and faithfully performing all obligations and undertakings required
21 under this section, and paying to the state and to any person all
22 money that becomes due and owing to the state or to any person
23 owed by the obligor of the bond.

24 (h) The nonprofit community service organization reports all
25 of the following to the debtor at least once every three months, or
26 upon the debtor's request, for any debt management plan or debt
27 settlement plan:

- 28 (1) Total amount received from the debtor.
- 29 (2) Total amount paid to each creditor.
- 30 (3) Total amount any creditor has agreed to accept as payment
31 in full on any debt owed by the debtor.
- 32 (4) Any amount paid to the organization by the debtor.
- 33 (5) Any amount held in reserve.
- 34 (i) The nonprofit community service organization submits to
35 the commissioner, at the organization's expense, an audit report
36 containing audited financial statements covering the calendar year
37 or, if the organization has an established fiscal year, then for that
38 fiscal year, within 120 days after the close of the calendar or fiscal
39 year.

1 (j) The nonprofit community service organization submits with
2 the annual financial statements required under subdivision (i) a
3 declaration that conforms to Section 2015.5 of the Code of Civil
4 Procedure, is executed by an official authorized by the board of
5 the organization, and that states that the organization complies
6 with this section. The annual financial statements shall also include
7 a separate written statement that identifies the name, address,
8 contact person, and telephone number of the organization.

9 (k) The nonprofit community service organization maintains
10 accreditation by an independent accrediting organization, including
11 either the Council on Accreditation or the International Standards
12 Organization, with sector certification.

13 (l) The nonprofit community service organization does not
14 engage in any act or practice in violation of Section 17200 or 17500
15 of the Business and Professions Code.

16 (m) The nonprofit community service organization inserts the
17 following statement, in not less than 10-point type, in its debt
18 management plan and debt settlement plan agreements:
19 “Complaints related to this agreement may be directed to the
20 California Department of ~~Corporations~~ *Business Oversight*. This
21 nonprofit community service organization has adopted best
22 practices for debt management plans and debt settlement plans,
23 and a copy will be provided upon request.”

24 (n) The nonprofit community service organization adopts and
25 implements on a continuous basis policies or procedures of best
26 practices that are designed to prevent improper debt management
27 or debt settlement practices and prevent theft and misappropriation
28 of funds. Failure to do the following shall constitute improper debt
29 management or debt settlement practices, as applicable:

30 (1) Obtain counselor certification conducted by a nationally
31 recognized third-party certification program that certifies that all
32 of the agency’s counselors receive proper training and are qualified
33 to provide financial assistance prior to performing counseling
34 services in this state.

35 (2) Disburse funds no later than 15 days after receipt of valid
36 funds, or by a scheduled disbursement date, whichever is the
37 greater amount of time.

38 (3) Transmit funds utilizing electronic payment processing when
39 available.

1 (4) Implement an inception date policy, which shall include an
2 agreement that a consumer's first disbursement pursuant to a debt
3 management plan shall be received within 90 days of agreeing to
4 the debt management plan service. The debt management plan
5 shall include all items described in subdivision (h) and shall be
6 provided to the consumer at the inception date of the plan. A
7 description of best practices of the agency and of the consumer
8 complaint resources shall be issued no later than the first payment
9 date.

10 (5) Respond to and research any complaint initiated by a
11 consumer within five business days of receipt of the complaint.

12 (6) Prohibit a policy requiring debt management plan consumers
13 from being required to utilize additional ancillary services.

14 (7) Provide consumer access to debt management plan services
15 regardless of the consumer's ability to pay fees related to the debt
16 management plan, lack of creditor participation, or the amount of
17 the consumer's outstanding debt.

18 (8) Implement policies that specifically prohibit credit
19 counselors from receiving financial incentives or additional
20 compensation based on the outcome of the counseling process.

21 (9) Prohibit the practice of paying referral fees to consumers or
22 other third parties who refer new clients to the agency.

23 (10) Disclose in all written contracts with consumers the portion
24 of funding for the agency that is provided by creditors.

25 (11) Disclose in all written contracts for debt management plans
26 or debt settlement plans that these plans are not suitable for all
27 consumers and that consumers may request information on other
28 options, including, but not limited to, bankruptcy.

29 (12) Fully disclose all services to be provided by the agency
30 and any initial and ongoing fees to be charged by the agency for
31 services, including, but not limited to, contributions to the agency.

32 (13) Prohibit the agency or any affiliate of the agency from
33 purchasing debt from a consumer.

34 (14) Prohibit the agency from offering loans to consumers
35 involving the charging of interest.

36 (15) Prominently disclose in written contracts with consumers
37 of any financial arrangement between the agency and any lender
38 or any provider of financial services if the agency receives any
39 form of compensation for referring consumers to that lender or
40 provider of financial services.

1 (16) Provide professional liability insurance coverage.

2 (17) Provide the debtor a written individualized evaluation of
3 his or her financial status and an initial debt management plan for
4 the debtor's debts with specific recommendations regarding actions
5 the debtor should take.

6 (18) Provide the debtor enrolling in a debt management plan a
7 written reliable estimate of the length of time it will take to
8 complete the plan and identifies the total debt owed to each creditor
9 included in the plan, the proposed payment to each creditor, and
10 any fees that would be charged for administering the plan. The
11 estimate shall be provided prior to receipt of the debtor's first
12 deposit.

13 (o) The nonprofit community service organization provides a
14 copy of the best practices described in subdivision (n) to its debtor,
15 upon request.

16 (p) The nonprofit community service organization resolves in
17 a prompt and reasonable manner complaints from debtors relating
18 to the organization's debt management plans or debt settlement
19 plans.

20 (q) The nonprofit community service organization provides
21 written notice to the commissioner within 30 days of dissolution
22 or termination of engaging in the activities of a prorater, as defined
23 in Section 12002.1.

24 (r) This section shall become inoperative upon the enactment
25 of a statute requiring the licensure and regulation of nonprofit
26 community service organizations providing consumer credit
27 counseling.

28 SEC. 34. Section 17210.2 of the Financial Code is amended
29 to read:

30 17210.2. (a) No escrow agent shall disseminate, or cause or
31 permit to be disseminated, in any manner whatsoever, any
32 statement or representation which is false, misleading, or deceptive,
33 or which omits to state material information, or which refers to
34 the supervision of that agent by the State of California or any
35 department or official thereof.

36 (b) A licensed escrow agent, in referring to the corporation's
37 licensure under this law in any written or printed communication
38 or any communication by means of recorded telephone messages
39 or spoken on radio, television, or similar communications media,
40 shall include the following statement: "This escrow company holds

1 California Department of ~~Corporations~~ *Business Oversight* Escrow
2 License No. ____.”

3 (c) The commissioner may order any person to desist from any
4 conduct which the commissioner finds to be a violation of this
5 section.

6 SEC. 35. Section 17214 of the Financial Code is amended to
7 read:

8 17214. (a) There is established in the Department of
9 ~~Corporations~~ *Business Oversight* an Escrow Law Advisory
10 Committee consisting of 11 members. The members shall consist
11 of the commissioner or his or her designee; the chairman of the
12 board and the immediate past chairman of the board for the Escrow
13 Agents’ Fidelity Corporation; the current chairman of the board
14 and the immediate past chairman of the board for the Escrow
15 Institute of California; a person selected by the commissioner to
16 represent a different type of business ownership under this division;
17 a person selected by the commissioner to represent a different type
18 of business specialization; a person selected by the commissioner
19 to represent small businesses operating pursuant to this division;
20 a person selected by the commissioner to represent medium-sized
21 businesses operating pursuant to this division; an attorney at law
22 experienced in escrow matters selected by the commissioner; and
23 a certified public accountant experienced in the escrow business
24 selected by the commissioner.

25 Except for the members from the Escrow Agents’ Fidelity
26 Corporation and the Escrow Institute of California, members
27 appointed by the commissioner shall serve for a term of two years.

28 The committee shall meet at least quarterly. The commissioner
29 or his or her designee shall chair the committee. All members shall
30 serve without compensation or reimbursement for expenses.

31 Where the chairman of the board or the immediate past chairman
32 of the board of the Escrow Agents’ Fidelity Corporation is the
33 same person, or is unable to serve on the advisory committee, then
34 the commissioner after consultation with the board of directors of
35 the Escrow Agents’ Fidelity Corporation, shall choose a member
36 of the board of directors to serve on the committee. Where the
37 president or past president of the Escrow Institute of California is
38 the same person, or is unable to serve on the advisory committee,
39 then the commissioner after consultation with the board of directors

1 of the Escrow Institute of California, shall choose a member of
2 the board of directors to serve on the committee.

3 (b) The purpose of the committee is to assist the commissioner
4 in the implementation of the commissioner's duties under this
5 chapter.

6 SEC. 36. Section 17311 of the Financial Code is amended to
7 read:

8 17311. (a) Persons licensed pursuant to this division shall
9 maintain a corporation under the Nonprofit Mutual Benefit
10 Corporation Law (Part 3 (commencing with Section 7110) of
11 Division 2 of Title 1 of the Corporations Code) operating under
12 the name Escrow Agents' Fidelity Corporation.

13 (b) The State of California, the Department of ~~Corporations~~,
14 *Business Oversight*, or any officer, agent, or employee of either
15 shall not be liable in any way for the conduct of Fidelity
16 Corporation, its directors, officers, agents, employees, or members.

17 SEC. 37. Section 17320 of the Financial Code is amended to
18 read:

19 17320. Fidelity Corporation shall establish and maintain the
20 following funds for payment of claims and for payment of costs
21 of administration: the membership fund, the operations fund, and
22 the fidelity fund.

23 (a) An applicant or a licensee shall, at the time an application
24 is filed for a license, pay to Fidelity Corporation a membership
25 fee of three thousand dollars (\$3,000) for each location for which
26 a license is applied. If the application is denied, withdrawn, or
27 abandoned, Fidelity Corporation may retain two hundred dollars
28 (\$200) from the membership fee to cover costs of administration.

29 (1) The membership fund shall be reserved for payment of
30 claims which exceed the fidelity fund balance and for payment of
31 extraordinary operational costs.

32 (2) Any member who, on the effective date of this section, has
33 an account balance which exceeds the three thousand dollars
34 (\$3,000) membership fee times the number of its licensed locations
35 shall be credited in a special reserve account for the excess amount.
36 This balance shall be credited against future assessments made
37 pursuant to subdivision (b) of Section 17321 in an amount not
38 exceeding four hundred dollars (\$400) per licensed location per
39 year. Any member whose account balance is less than three
40 thousand dollars (\$3,000) times the number of its licensed locations

1 shall, on or before December 1, 1988, pay to Fidelity Corporation
2 an amount sufficient to allow the member's account to be
3 maintained at three thousand dollars (\$3,000) times the number
4 of licensed locations. Fidelity Corporation shall provide each
5 member with an accounting of the amounts being reserved for the
6 members' membership account and amounts being held as a special
7 reserve.

8 (3) The membership fee, less any unpaid assessments and related
9 costs, shall be refunded to the member in accordance with Fidelity
10 Corporation's bylaws not less than 30 months and no more than
11 36 months after the effective date of surrender of a license.

12 (4) Any member who does not engage in any escrow transactions
13 pursuant to subdivision (c) of Section 17312 may terminate its
14 membership in Fidelity Corporation by written notice to Fidelity
15 Corporation and the Department of ~~Corporations~~, *Business*
16 *Oversight*, as provided in the Fidelity Corporation's bylaws and
17 rules and regulations. The membership fee, less any unpaid
18 assessments and related costs, shall be refunded to the member in
19 accordance with Fidelity Corporation's bylaws not less than 30
20 months and no more than 36 months after the effective date of the
21 member's written request to terminate its membership in Fidelity
22 Corporation. Before a licensee resumes those escrow transactions,
23 it shall first be required to become a member of Fidelity
24 Corporation, as provided in this subdivision.

25 (b) Fidelity Corporation shall prepare, prior to its fiscal year
26 end, an estimated annual operational budget projecting the costs
27 of operations and administration for the succeeding fiscal year,
28 excluding the amount paid for claims and premiums paid for excess
29 coverage bonding. The amount of the assessment shall be 150
30 percent of the budgetary projection. In succeeding years, the
31 assessment shall be adjusted by adding the prior year's deficit or
32 deducting unused surplus from the prior year.

33 (c) Fidelity Corporation shall establish a fidelity fund for the
34 payment of claims and for the payment of the premium for the
35 fidelity bond or insurance policy, if any. All claims shall be paid
36 from the fidelity fund, provided that, to the extent that the fidelity
37 fund balance is not sufficient to pay claims, the claim shall be paid
38 from the membership fund by charging each member's membership
39 account a pro rata share of the excess.

1 (d) All interest earned on the membership fund and the
2 operations fund shall be credited to the fidelity fund.

3 SEC. 38. Section 17331 of the Financial Code is amended to
4 read:

5 17331. (a) An applicant applying for licensure as an escrow
6 agent under this division is required to apply for a Fidelity
7 Corporation Certificate, prepared and issued by Fidelity
8 Corporation, for each proposed shareholder, officer, director,
9 trustee, manager, or employee who is to be directly or indirectly
10 compensated by the escrow agent, prior to licensure of the escrow
11 agent by the commissioner.

12 (b) A shareholder, officer, director, trustee, manager, or
13 employee of an escrow agent, directly or indirectly compensated
14 by an escrow agent within this state, is required to complete and
15 execute a Fidelity Corporation Certificate application, prepared
16 and issued by Fidelity Corporation, as a condition of his or her
17 employment or entitlement to compensation, before the person
18 may continue the regular discharge of his or her duties, or have
19 access to moneys or negotiable securities belonging to or in the
20 possession of the escrow agent, or draw checks upon the escrow
21 agent or the trust funds of the escrow agent.

22 (c) Fidelity Corporation Certificates may also be known as
23 Escrow Agent's Fidelity Corporation Certificates or EAFC
24 Certificates. The certificate at all times remains the property of
25 Fidelity Corporation, and is not transferable by either a member
26 or employee. The certificate is not a warranty or guarantee by
27 Fidelity Corporation of the integrity, veracity, or competence of
28 the person.

29 (d) An application for a Fidelity Corporation Certificate shall
30 be in writing and in the form prescribed by Fidelity Corporation.
31 The application may include (1) a fee not to exceed fifty dollars
32 (\$50), (2) two passport-size photographs, and (3) a set of fingerprint
33 images and related information using the process established by
34 the Department of Justice for requesting state summary criminal
35 history information, plus the fee charged by the Department of
36 Justice for processing noncriminal applicant fingerprint images
37 and related information, in a manner established by the Department
38 of Justice pursuant to subdivision (l). The Department of Justice
39 shall honor the Fidelity Corporation report request form and issue
40 a report to Fidelity Corporation, notwithstanding any other

1 provision of law or regulation to the contrary. Fidelity Corporation
2 is also entitled to submit a set of fingerprint images and related
3 information in the Department of Justice specified noncriminal
4 applicant fingerprint format for the purpose of requesting and
5 obtaining a report from the Department of Justice, for the officers
6 and employees of Fidelity Corporation. A member shall cause the
7 filing of applications for all existing employees as required by this
8 section within 30 days of written notice by Fidelity Corporation
9 to the member.

10 (e) The application form shall include a provision for binding
11 arbitration to allow for arbitration of any appeal or dispute as to a
12 decision by Fidelity Corporation concerning the certificate, as
13 follows:

14 A DISPUTE AS TO WHETHER THE DENIAL OF THIS
15 CERTIFICATE APPLICATION OR ANY SUBSEQUENT
16 SUSPENSION OR REVOCATION OF THE CERTIFICATE IS
17 UNNECESSARY OR UNAUTHORIZED OR WAS
18 IMPROPERLY, NEGLIGENTLY, OR UNLAWFULLY
19 RENDERED, MAY BE DETERMINED BY SUBMISSION TO
20 ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND
21 NOT BY A LAWSUIT OR RESORT TO COURT PROCESS
22 EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL
23 REVIEW OF ARBITRATION PROCEEDINGS OR EXCEPT
24 AS PROVIDED BY SECTION 17331.3 OF THE FINANCIAL
25 CODE. THE APPLICANT MAY, SUBJECT TO AGREEMENT,
26 SUBMIT ANY ISSUE ARISING FROM A DECISION BY
27 FIDELITY CORPORATION TO DENY THIS CERTIFICATE
28 APPLICATION OR TO SUSPEND OR REVOKE THE
29 CERTIFICATE TO BE DECIDED BY BINDING NEUTRAL
30 ARBITRATION. UPON AN AGREEMENT TO SUBMIT TO
31 BINDING NEUTRAL ARBITRATION, THE APPLICANT HAS
32 NO RIGHT TO HAVE ANY DISPUTE CONCERNING THIS
33 CERTIFICATE APPLICATION LITIGATED IN A COURT OR
34 JURY TRIAL NOR ANY JUDICIAL RIGHTS TO DISCOVERY
35 AND APPEAL, EXCEPT AS SPECIFICALLY PROVIDED IN
36 THE ESCROW LAW. ARBITRATION MAY BE COMPELLED
37 AS PROVIDED BY LAW.

38 (f) There is no liability on the part of and no cause of action of
39 any nature may arise against Fidelity Corporation or its members,
40 directors, officers, employees, or agents, the State of California,

1 the Department of ~~Corporations~~, *Business Oversight*, or any officer,
2 agent, or employee of the state or the Department of ~~Corporations~~
3 *Business Oversight* for statements made by Fidelity Corporation
4 in reports or recommendations made pursuant to this division, or
5 for reports or recommendations made pursuant to this division to
6 Fidelity Corporation by its members, directors, officers, employees
7 or agents, the State of California, the Department of ~~Corporations~~,
8 *Business Oversight* or any officer, agent, or employee of the state
9 or the Department of ~~Corporations~~, *Business Oversight*, unless the
10 information provided is false and the party making the statement
11 or providing the false information does so with knowledge and
12 malice. Reports or recommendations made pursuant to this section,
13 or Section 17331.1, 17331.2, or 17331.3, are not public documents.

14 (g) There is no liability on the part of and no cause of action of
15 any nature may arise against Fidelity Corporation or its members,
16 directors, officers, employees, or agents, the State of California,
17 the Department of ~~Corporations~~, *Business Oversight*, or an officer,
18 agent, or employee of the state or the Department of ~~Corporations~~
19 *Business Oversight* for the release of any information furnished
20 to Fidelity Corporation pursuant to this section unless the
21 information released is false and the party, including Fidelity
22 Corporation, its members, directors, officers, employees, or agents,
23 the state, the Department of ~~Corporations~~, *Business Oversight*, or
24 any officer, agent, or employee of the state or the Department of
25 ~~Corporations~~, *Business Oversight*, who releases the false
26 information does so with knowledge and malice.

27 (h) There is no liability on the part of and no cause of action of
28 any nature may arise against Fidelity Corporation or its directors,
29 officers, employees, or agents, for any decision to deny an
30 application for a certificate or to suspend or revoke the certificate
31 of any person or for the timing of any decision or the timing of
32 any notice to persons or members thereof, or for any failure to
33 deny an application under subdivision (a) of Section 17331.2. This
34 subdivision does not apply to acts performed in bad faith or with
35 malice.

36 (i) Fidelity Corporation, any member of Fidelity Corporation,
37 an agent of Fidelity Corporation or of its members, or any person
38 who uses any information obtained under this section for any
39 purpose not authorized by this chapter is guilty of a misdemeanor.

(j) Section 17331, 17331.1, or 17331.2 does not constitute a restriction or limitation upon the obligation of Fidelity Corporation to indemnify members against loss, as provided in Sections 17310 and 17314. The failure to obtain a certificate, the denial of an application for a certificate, or the suspension, cancellation, or revocation of a certificate does not limit the obligation of Fidelity Corporation to indemnify a member against loss.

(k) Notwithstanding Section 11105 of the Penal Code, Fidelity Corporation is entitled to receive state summary criminal history information and subsequent arrest notification from the Department of Justice as a result of fingerprint images and related information submitted to the Department of Justice by the Department of ~~Corporations~~, *Business Oversight*, pursuant to subdivision (g) of Section 17209, Section 17212.1, and subdivision (d) of Section 17414.1, by or on behalf of escrow agents, shareholders, officers, directors, trustees, managers, or employees of an escrow agent, directly or indirectly compensated by an escrow agent. The Department of Justice and Fidelity Corporation shall enter into an agreement to implement this subdivision. The Department of ~~Corporations~~ *Business Oversight* shall forward to Fidelity Corporation, weekly, a list of names of individual fingerprints submitted to the Department of Justice.

(l) (1) The fingerprint images and related information required pursuant to subdivision (d) shall be submitted by the Department of ~~Corporations~~ *Business Oversight* to the Department of Justice, in a manner established by the Department of Justice, for the purposes of obtaining information as to the existence and content of a record of state or federal convictions, state or federal arrests, and information as to the existence of and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(2) Upon receipt, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the Department of ~~Corporations~~ *Business Oversight* and a fitness determination to Fidelity Corporation pursuant to subdivision (p) of Section 11105 of the Penal Code.

1 (3) The Department of Justice shall charge a fee sufficient to
2 cover the costs of processing the requests pursuant to this
3 subdivision.

4 SEC. 39. Section 18405 of the Financial Code is amended to
5 read:

6 18405. (a) On or before the 15th day of March of every year,
7 each industrial loan company shall file with the commissioner an
8 audit report containing audited financial statements together with
9 such other relevant information as the commissioner may require
10 relating to the company and to each place of business of the
11 company. The audited financial statements shall include a balance
12 sheet of the company prepared as of the last day of the preceding
13 calendar year and statements of income and of surplus for such
14 calendar year.

15 ~~(b) An industrial loan company whose certificate has been~~
16 ~~surrendered or revoked shall, on or before 105 days after the~~
17 ~~effective date of such surrender or revocation, submit to the~~
18 ~~commissioner a closing audit report containing audited financial~~
19 ~~statements as of such effective date for the 12 months ending with~~
20 ~~such effective date, or for such other period as the commissioner~~
21 ~~may specify. Such report shall include the information required~~
22 ~~by subdivision (a) of this section and other relevant information~~
23 ~~specified by the commissioner. A company which has complied~~
24 ~~with this subdivision is exempted from the provisions of~~
25 ~~subdivision (a).~~

26 ~~(c)~~

27 (b) The reports and financial statements referred to in
28 ~~subdivisions (a) and (b)~~ *subdivision (a)* shall be prepared in
29 accordance with generally accepted accounting principles and shall
30 be accompanied by a report, certificate, or opinion of an
31 independent certified public accountant or independent public
32 accountant, and shall contain such relevant information as the
33 commissioner may require. The audits shall be conducted in
34 accordance with generally accepted auditing standards and the
35 rules and regulations of the commissioner.

36 ~~(d)~~

37 (c) For good cause and upon written request, the commissioner
38 may extend the time for compliance with ~~subdivisions (a) and (b).~~
39 *subdivision (a).*

40 ~~(e)~~

1 (d) If the report, certificate or opinion of the independent
2 accountant referred to in subdivision ~~(e)~~ (b) hereof is in any way
3 qualified, the commissioner may require the company to take such
4 action as he deems appropriate to permit an independent accountant
5 to remove such qualification from the report, certificate or opinion.

6 ~~(f)~~

7 (e) The commissioner may reject any financial statement, report,
8 certificate or opinion filed pursuant to this section by notifying the
9 company required to make such filing of its rejection and the cause
10 thereof. Within 30 days after the receipt of such notice, the
11 company shall correct such deficiency, and the failure so to do
12 shall be deemed a violation of this division. The commissioner
13 shall retain a copy of all filings so rejected.

14 SEC. 40. Section 22105.1 of the Financial Code is amended
15 to read:

16 22105.1. (a) An applicant for a mortgage loan originator
17 license shall apply by submitting the uniform form prescribed for
18 such purpose by the Nationwide Mortgage Licensing System and
19 Registry. The commissioner may require the submission of
20 additional information or supporting documentation to the
21 department.

22 (b) Section 461 of the Business and Professions Code shall not
23 be applicable to the Department of ~~Corporations~~ *Business Oversight*
24 when using a national uniform application adopted or approved
25 for use by the Nationwide Mortgage Licensing System and Registry
26 in connection with the SAFE Act.

27 (c) In connection with an application for a license as a mortgage
28 loan originator, the applicant shall, at a minimum, furnish to the
29 Nationwide Mortgage Licensing System and Registry information
30 concerning the applicant's identity, including the following:

31 (1) Fingerprint images and related information, for purposes of
32 performing a federal, or both a state and federal, criminal history
33 background check.

34 (2) Personal history and experience in a form prescribed by the
35 Nationwide Mortgage Licensing System and Registry, including
36 the submission of authorization for the Nationwide Mortgage
37 Licensing System and Registry and the commissioner to obtain
38 both of the following:

39 (A) An independent credit report obtained from a consumer
40 reporting agency.

1 (B) Information related to any administrative, civil, or criminal
2 findings by any governmental jurisdiction.

3 (d) The commissioner may ask the Nationwide Mortgage
4 Licensing System and Registry to obtain state criminal history
5 background check information on applicants described in
6 subdivision (a) using the procedures set forth in subdivisions (e)
7 and (f).

8 (e) If the Nationwide Mortgage Licensing System and Registry
9 electronically submits fingerprint images and related information,
10 as required by the Department of Justice, for an applicant for a
11 mortgage loan originator license, for the purposes of obtaining
12 information as to the existence and content of a record of state
13 convictions and state arrests and to the existence and content of a
14 record of state arrests for which the Department of Justice
15 establishes that the person is free on bail or on his or her
16 recognizance pending trial or appeal, the Department of Justice
17 shall provide an electronic response to the Nationwide Mortgage
18 Licensing System and Registry pursuant to paragraph (1) of
19 subdivision (p) of Section 11105 of the Penal Code, and shall
20 provide the same electronic response to the commissioner.

21 (f) The Nationwide Mortgage Licensing System and Registry
22 may request from the Department of Justice subsequent arrest
23 notification service, as provided pursuant to Section 11105.2 of
24 the Penal Code, for persons described in subdivision (a). The
25 Department of Justice shall provide the same electronic response
26 to the commissioner.

27 (g) The Department of Justice shall charge a fee sufficient to
28 cover the cost of processing the requests described in this section.

29 SEC. 41. Section 22159.5 of the Financial Code is amended
30 to read:

31 22159.5. (a) The commissioner may, as he or she deems
32 necessary, require licensees to provide reports concerning their
33 residential mortgage loan servicing activities, including, but not
34 limited to, information similar to that collected in connection with
35 the Mortgage Servicers Survey, first published by the Department
36 of ~~Corporations~~ *Business Oversight* in December 2007. The
37 commissioner is additionally authorized to seek and accept
38 information provided on a voluntary basis by residential mortgage
39 loan servicers not subject to the commissioner's jurisdiction. The
40 commissioner shall post only aggregated survey results on the

1 department's Internet Web site, and shall note the number of loan
2 servicers submitting data included in the aggregated totals and the
3 estimated percentage of outstanding mortgage loans to Californians
4 that are serviced by these loan servicers, to the extent information
5 on the number of outstanding loans is available from a reliable
6 source. Nothing in this section is intended to reduce or change the
7 commissioner's authority to request and demand reports under
8 Sections 22150 and 22159.

9 (b) For purposes of this section, "mortgage loan servicing
10 activity" means receiving more than three installment payments
11 of principal, interest, or other amounts placed in escrow, pursuant
12 to the terms of a mortgage loan, and performing services relating
13 to that receipt or the enforcement of its receipt, on behalf of the
14 holder of the note evidencing that loan.

15 SEC. 42. Section 22160 of the Financial Code is amended to
16 read:

17 22160. The commissioner shall make and file annually with
18 the Department of ~~Corporations~~ *Business Oversight* as a public
19 record a composite of the annual reports and any comments on the
20 reports that he or she deems to be in the public interest.

21 SEC. 43. Section 22756 of the Financial Code is amended to
22 read:

23 22756. Notwithstanding any other law, any application for
24 licensure, amendment to the application or registration document
25 or notice filed under any of the laws administered by the
26 Department of ~~Corporations~~, *Business Oversight*, or record
27 otherwise required to be filed in this state as an electronic record
28 pursuant to a nationwide central depository for information
29 regarding licensees, including mortgage loan originators, or any
30 electronic record filed through the Nationwide Mortgage Licensing
31 System and Registry, shall be deemed to be a valid original
32 document upon reproduction to paper form by the Department of
33 ~~Corporations~~. *Business Oversight*.

34 SEC. 44. Section 23070 of the Financial Code is amended to
35 read:

36 23070. (a) The Legislature finds and declares that it is in the
37 public interest for the administration and enforcement of this
38 division to be undertaken by the Department of ~~Corporations~~.
39 *Business Oversight*.

1 (b) It is therefore the intent of the Legislature to transfer the
2 existing responsibilities relating to administration and enforcement
3 of check cashers that engage in activities subject to this division
4 from the Department of Justice to the Department of ~~Corporations~~.
5 *Business Oversight*.

6 SEC. 45. Section 23071 of the Financial Code is amended to
7 read:

8 23071. The Commissioner of ~~Corporations~~ *Business Oversight*
9 and the Department of ~~Corporations~~ *Business Oversight* shall
10 succeed to, and are vested with, all duties, powers, purposes,
11 responsibilities, and jurisdiction of the Department of Justice as
12 they relate to check cashers who engage in the activities subject
13 to this division.

14 SEC. 46. Section 23072 of the Financial Code is amended to
15 read:

16 23072. The Department of ~~Corporations~~ *Business Oversight*
17 may use the unexpended balance of funds available for use in
18 connection with the performance of duties of the Department of
19 Justice to which the Department of ~~Corporations~~ *Business*
20 *Oversight* succeeds pursuant to Section 23071.

21 SEC. 47. Section 23073 of the Financial Code is amended to
22 read:

23 23073. All officers and employees of the Department of Justice
24 who, on the operative date of this division, are performing any
25 duty, power, purpose, responsibility, or jurisdiction to which the
26 Department of ~~Corporations~~ *Business Oversight* succeeds, and
27 who are serving in the civil service, other than as temporary
28 employees or persons in positions exempted from civil service,
29 shall be transferred to the Department of ~~Corporations~~ *Business*
30 *Oversight*. The status, position, and rights of those persons shall
31 not be affected by the transfer and shall be retained by those
32 persons as officers and employees of the Department of
33 ~~Corporations~~ *Business Oversight*, pursuant to Part 2 (commencing
34 with Section 18500) of Division 5 of Title 2 of the Government
35 Code.

36 SEC. 48. Section 23074 of the Financial Code is amended to
37 read:

38 23074. The Department of ~~Corporations~~ *Business Oversight*
39 shall have possession and control of all records, criminal history
40 information, papers, equipment, supplies, moneys, funds,

1 appropriations, licenses, permits, contracts, claims, judgments,
2 land, and other property, real or personal, connected with the
3 administration of, or held for the benefit or use of, the Department
4 of Justice for the performance of the functions transferred to the
5 Department of ~~Corporations~~ *Business Oversight* pursuant to Section
6 23071.

7 SEC. 49. Section 23102 of the Financial Code is amended to
8 read:

9 23102. The deferred deposits made pursuant to a permit issued
10 under Section 1789.37 of the Civil Code prior to December 31,
11 2004, shall be subject to and enforced to the extent valid under
12 Sections 1789.30 to 1789.37, inclusive, of the Civil Code, as if
13 those sections were not repealed. Any regulation, order, or other
14 action adopted, prescribed, taken, or performed by the Department
15 of Justice or by an officer of that department in connection with
16 deferred deposit transactions made prior to December 31, 2004,
17 shall continue to apply to those transactions. No suit, action, or
18 other proceeding lawfully commenced by or against the Department
19 of Justice or any other officer of the state in relation to deferred
20 deposit transactions made prior to December 31, 2004, shall abate
21 by reason of the transfer of authority concerning deferred deposit
22 transactions to the Department of ~~Corporations~~ *Business Oversight*
23 pursuant to Section 23071.

24 SEC. 50. Section 30217 of the Financial Code is amended to
25 read:

26 30217. The commissioner may from time to time make, amend,
27 and rescind such rules, forms, and orders as are necessary to carry
28 out the provisions of this law, including rules defining any terms,
29 whether or not used in this law, insofar as the definitions are not
30 inconsistent with the provisions of this law. For the purposes of
31 rules and forms, the commissioner may classify persons and matters
32 within his jurisdiction and may prescribe different requirements
33 for different classes. The commissioner may in his discretion waive
34 any requirement of any rule or form in situations where in his
35 opinion such requirement is not necessary in the public interest or
36 for the protection of investors. All rules of the commissioner other
37 than those relating solely to the internal administration of the
38 Department of ~~Corporations~~ *Business Oversight* shall be made,
39 amended, or rescinded in accordance with the provisions of Chapter

1 4.5 (commencing with Section 11371) of Part 1 of Division 3 of
2 Title 2 of the Government Code.

3 SEC. 51. Section 50140 of the Financial Code is amended to
4 read:

5 50140. (a) An applicant for a license as a mortgage loan
6 originator shall apply by submitting the uniform form prescribed
7 for that purpose by the Nationwide Mortgage Licensing System
8 and Registry. The commissioner may require the submission of
9 additional information or supporting documentation to the
10 department.

11 (b) Section 461 of the Business and Professions Code shall not
12 be applicable to the Department of ~~Corporations~~ *Business Oversight*
13 when using a national uniform application adopted or approved
14 for use by the Nationwide Mortgage Licensing System and Registry
15 in connection with the SAFE Act.

16 (c) The commissioner shall, by rule, establish the timelines,
17 fees, and assessments applicable to applicants for original mortgage
18 loan originator licenses, license renewals, and license changes
19 under this division.

20 (d) The commissioner may, by rule, require mortgage loan
21 originator licensees to pay assessments through the Nationwide
22 Mortgage Licensing System and Registry.

23 (e) In connection with an application for a license as a mortgage
24 loan originator, the applicant shall, at a minimum, furnish to the
25 Nationwide Mortgage Licensing System and Registry information
26 concerning the applicant's identity, including the following:

27 (1) Fingerprint images and related information, for purposes of
28 performing a federal, or both a state and federal, criminal history
29 background check.

30 (2) Personal history and experience in a form prescribed by the
31 Nationwide Mortgage Licensing System and Registry, including
32 the submission of authorization for the Nationwide Mortgage
33 Licensing System and Registry and the commissioner to obtain
34 both of the following:

35 (A) An independent credit report obtained from a consumer
36 reporting agency.

37 (B) Information related to any administrative, civil, or criminal
38 findings by any governmental jurisdiction.

39 (f) The commissioner may ask the Nationwide Mortgage
40 Licensing System and Registry to obtain state criminal history

1 background check information on applicants described in
2 subdivision (a) using the procedures set forth in subdivisions (g)
3 and (h).

4 (g) If the Nationwide Mortgage Licensing System and Registry
5 electronically submits fingerprint images and related information,
6 as required by the Department of Justice, for an applicant for a
7 mortgage loan originator license, for the purposes of obtaining
8 information as to the existence and content of a record of state
9 convictions and state arrests and to the existence and content of a
10 record of state arrests for which the Department of Justice
11 establishes that the person is free on bail or on his or her
12 recognizance pending trial or appeal, the Department of Justice
13 shall provide an electronic response to the Nationwide Mortgage
14 Licensing System and Registry pursuant to paragraph (1) of
15 subdivision (p) of Section 11105 of the Penal Code, and shall
16 provide the same electronic response to the commissioner.

17 (h) The Nationwide Mortgage Licensing System and Registry
18 may request from the Department of Justice subsequent arrest
19 notification service, as provided pursuant to Section 11105.2 of
20 the Penal Code, for persons described in subdivision (a). The
21 Department of Justice shall provide the same electronic response
22 to the commissioner.

23 (i) The Department of Justice shall charge a fee sufficient to
24 cover the cost of processing the requests described in this section.

25 SEC. 52. Section 50303 of the Financial Code is amended to
26 read:

27 50303. Neither the commissioner nor any employee of the
28 Department of ~~Corporations~~ *Business Oversight* shall be precluded
29 from obtaining a residential mortgage loan from a lender licensed
30 under this division, subject to the rules that may be adopted
31 hereunder or pursuant to other proper authority.

32 SEC. 53. Section 50307.1 of the Financial Code is amended
33 to read:

34 50307.1. The commissioner may, as he or she deems necessary,
35 require licensees to provide reports concerning their residential
36 mortgage loan servicing activities, including, but not limited to,
37 information similar to that collected in connection with the
38 Mortgage Servicers Survey, first published by the Department of
39 ~~Corporations~~ *Business Oversight* in December 2007. The
40 commissioner is additionally authorized to seek and accept

1 information provided on a voluntary basis by residential mortgage
2 loan servicers not subject to the commissioner's jurisdiction. The
3 commissioner shall post only aggregated survey results on the
4 department's Internet Web site, and shall note the number of loan
5 servicers submitting data included in the aggregated totals and the
6 estimated percentage of outstanding mortgage loans to Californians
7 that are serviced by these loan servicers, to the extent information
8 on the number of outstanding loans is available from a reliable
9 source. Nothing in this section is intended to reduce or change the
10 commissioner's authority to request and demand reports under
11 Section 50307.

12 SEC. 54. Section 50316.5 of the Financial Code is amended
13 to read:

14 50316.5. Notwithstanding any other law, any application for
15 licensure, amendment to the application or registration document
16 or notice filed under any of the laws administered by the
17 Department of ~~Corporations~~, *Business Oversight*, or record
18 otherwise required to be filed in this state as an electronic record
19 pursuant to a nationwide central depository for information
20 regarding licensees, including mortgage loan originators, or any
21 electronic record filed through the Nationwide Mortgage Licensing
22 System and Registry, shall be deemed to be a valid original
23 document upon reproduction to paper form by the Department of
24 ~~Corporations~~, *Business Oversight*.

25 SEC. 55. Section 5970 of the Government Code is amended
26 to read:

27 5970. As used in this chapter, the following phrases have the
28 following meanings:

29 (a) "Person" means any broker, dealer, municipal securities
30 dealer, investment advisor, or investment firm.

31 (b) "Regulatory agency" means the Department of ~~Corporations~~,
32 *Business Oversight*, the securities administrators or other similar
33 regulatory authority in any other state, the Securities and Exchange
34 Commission, the National Association of Securities Dealers, the
35 Municipal Securities Rulemaking Board, the Commodity Futures
36 Trading Commission, or any other self-regulatory organization.

37 (c) ~~"State~~

38 (c) "*State* or local government" means the state, any department,
39 agency, board, commission, or authority of the state, or any city,

1 city and county, county, public district, public corporation,
2 authority, agency, board, commission, or other public entity.

3 SEC. 56. Section 6254.5 of the Government Code is amended
4 to read:

5 6254.5. Notwithstanding any other provisions of law, whenever
6 a state or local agency discloses a public record which is otherwise
7 exempt from this chapter, to any member of the public, this
8 disclosure shall constitute a waiver of the exemptions specified in
9 Sections 6254, 6254.7, or other similar provisions of law. For
10 purposes of this section, “agency” includes a member, agent,
11 officer, or employee of the agency acting within the scope of his
12 or her membership, agency, office, or employment.

13 This section, however, shall not apply to disclosures:

14 (a) Made pursuant to the Information Practices Act (commencing
15 with Section 1798 of the Civil Code) or discovery proceedings.

16 (b) Made through other legal proceedings or as otherwise
17 required by law.

18 (c) Within the scope of disclosure of a statute which limits
19 disclosure of specified writings to certain purposes.

20 (d) Not required by law, and prohibited by formal action of an
21 elected legislative body of the local agency which retains the
22 writings.

23 (e) Made to any governmental agency which agrees to treat the
24 disclosed material as confidential. Only persons authorized in
25 writing by the person in charge of the agency shall be permitted
26 to obtain the information. Any information obtained by the agency
27 shall only be used for purposes which are consistent with existing
28 law.

29 (f) Of records relating to a financial institution or an affiliate
30 thereof, if the disclosures are made to the financial institution or
31 affiliate by a state agency responsible for the regulation or
32 supervision of the financial institution or affiliate.

33 (g) Of records relating to any person that is subject to the
34 jurisdiction of the Department of Business Oversight, if the
35 disclosures are made to the person that is the subject of the records
36 for the purpose of corrective action by that person, or if a
37 corporation, to an officer, director, or other key personnel of the
38 corporation for the purpose of corrective action, or to any other
39 person to the extent necessary to obtain information from that

1 person for the purpose of an investigation by the Department of
2 ~~Corporations~~ *Business Oversight*.

3 (h) Made by the Commissioner of Business Oversight under
4 Section 450, 452, 8009, or 18396 of the Financial Code.

5 (i) Of records relating to any person that is subject to the
6 jurisdiction of the Department of Managed Health Care, if the
7 disclosures are made to the person that is the subject of the records
8 for the purpose of corrective action by that person, or if a
9 corporation, to an officer, director, or other key personnel of the
10 corporation for the purpose of corrective action, or to any other
11 person to the extent necessary to obtain information from that
12 person for the purpose of an investigation by the Department of
13 Managed Health Care.

14 SEC. 57. Section 6254.12 of the Government Code is amended
15 to read:

16 6254.12. Any information reported to the North American
17 Securities Administrators Association/National Association of
18 Securities Dealers' Central Registration Depository and compiled
19 as disciplinary records which are made available to the Department
20 of ~~Corporations~~ *Business Oversight* through a computer system,
21 shall constitute a public record. Notwithstanding any other
22 provision of law, the Department of ~~Corporations~~ *Business*
23 *Oversight* may disclose that information and the current license
24 status and the year of issuance of the license of a broker-dealer
25 upon written or oral request pursuant to Section 25247 of the
26 Corporations Code.

27 SEC. 58. Section 6254.22 of the Government Code is amended
28 to read:

29 6254.22. Nothing in this chapter or any other provision of law
30 shall require the disclosure of records of a health plan that is
31 licensed pursuant to the Knox-Keene Health Care Service Plan
32 Act of 1975 (Chapter 2.2 (commencing with Section 1340) of
33 Division 2 of the Health and Safety Code) and that is governed by
34 a county board of supervisors, whether paper records, records
35 maintained in the management information system, or records in
36 any other form, that relate to provider rate or payment
37 determinations, allocation or distribution methodologies for
38 provider payments, formulae or calculations for these payments,
39 and contract negotiations with providers of health care for
40 alternative rates for a period of three years after the contract is

1 fully executed. The transmission of the records, or the information
2 contained therein in an alternative form, to the board of supervisors
3 shall not constitute a waiver of exemption from disclosure, and
4 the records and information once transmitted to the board of
5 supervisors shall be subject to this same exemption. The provisions
6 of this section shall not prevent access to any records by the Joint
7 Legislative Audit Committee in the exercise of its powers pursuant
8 to Article 1 (commencing with Section 10500) of Chapter 4 of
9 Part 2 of Division 2 of Title 2. The provisions of this section also
10 shall not prevent access to any records by the Department of
11 ~~Corporations~~ *Business Oversight* in the exercise of its powers
12 pursuant to Article 1 (commencing with Section 1340) of Chapter
13 2.2 of Division 2 of the Health and Safety Code.

14 SEC. 59. Section 11840 of the Government Code is amended
15 to read:

16 11840. The Legislature finds and declares all of the following:

17 (a) The current regulatory responsibility for medical services
18 is spread among many governmental entities including all of the
19 following:

20 (1) The Medical Board of California.

21 (2) The Department of ~~Corporations~~ *Business Oversight*.

22 (3) The State Department of Health Services.

23 (b) This overlapping jurisdiction has resulted in multiple and
24 duplicative audits of many physician offices, additional expense
25 and hiring of additional staff to respond to duplicate requests for
26 medical records, and the review of confidential medical records
27 by a growing number of governmental entities.

28 (c) In the interest of reducing the number of separate times
29 various public and private agencies review confidential medical
30 records, streamlining the regulatory process, and reducing the
31 redundant reviews of the offices of physicians, it is the intent of
32 the Legislature to coordinate, to the extent feasible, as many of
33 these regulatory functions as possible.

34 (d) In addition to government audits of physician offices,
35 numerous private entities also conduct reviews of physician offices.

36 (e) It is in the public interest to achieve ultimately a uniform
37 system of private and public auditing of physician offices and,
38 thus, streamline the process as much as possible.

39 SEC. 60. Section 53344.1 of the Government Code is amended
40 to read:

1 53344.1. (a) The legislative body may provide in the resolution
2 of intention or the resolution of consideration, and in documents
3 setting forth the rights of the debtholders that it shall reserve to
4 itself, the right and authority to allow any interested owner of
5 property within the district, subject to the provisions of this section
6 and to those conditions as it may impose, and any applicable
7 prepayment penalties as prescribed in the bond indenture or
8 comparable instrument or document, to tender to the district
9 treasurer in full payment or part payment of any installment of the
10 special taxes or the interest or penalties thereon which may be due
11 or delinquent, but for which a bill has been received, any bond or
12 other obligation secured thereby, the bond or other obligation to
13 be taken at par and credit to be given for the accrued interest shown
14 thereby computed to the date of tender. The district treasurer shall
15 thereupon cancel the bond debt and shall cause proper credit
16 therefor to be entered on the records of the district and in the office
17 of the auditor and tax collector. If the legislative body agrees to
18 allow bond tenders pursuant to this section or to Section 53356.8,
19 the legislative body may, at its discretion, agree to distribute or
20 direct its trustee or other agent to distribute by any means an offer
21 to purchase bonds or other related inquiry to the holders of the
22 bonds of the district, at the expense of the person requesting the
23 mailing. Neither the legislative body, nor any of its officers, agents,
24 or trustees shall be liable in any way for that distribution.

25 (b) The provisions of this subdivision apply to any tender of
26 bonds pursuant to this section by an owner of property within the
27 district who is delinquent in paying special taxes levied by this
28 district when due. Bonds may be tendered pursuant to this
29 subdivision only after all of the following conditions have been
30 satisfied:

31 (1) The delinquent lot or parcel has been offered for sale as a
32 result of a foreclosure judgment and the minimum price required
33 to be paid for the lot or parcel was not received.

34 (2) The bonds to be tendered to the district were obtained by
35 the property owner only after their prior owner was presented with
36 a tender offer or solicitation as defined in this subdivision.

37 (A) For purposes of this subdivision, a “tender offer” or
38 “solicitation” is a solicitation by any person or that person’s agent
39 by offering circular, memoranda, tender, or solicitation, or any
40 other document or written, oral, or electronic communication for

1 the purchase of the bonds from their then current owner. A person
2 includes a natural person, corporation, company, partnership,
3 limited liability company, limited liability partnership, association,
4 or any other entity and a “tendering party” includes any person
5 making a tender offer for bonds.

6 (B) Any tender offer or solicitation shall include all material
7 information as required under federal and state securities laws and
8 shall also include the following information, to the extent
9 applicable:

10 (i) The name of the tendering party.

11 (ii) An individual who can be contacted to provide further
12 information with respect to the tender.

13 (iii) The current holdings of bonds of the district by the tendering
14 party and its affiliates.

15 (iv) The total face amount of the bonds being solicited.

16 (v) The price or method of determining the price per one
17 thousand dollars (\$1,000) in bonds being offered by the tendering
18 party.

19 (vi) Whether the tendering party or any person affiliated with
20 or related to the tendering party, or any employee, agent, or
21 representative of the tendering party, is a property owner within
22 the district that issued the bonds.

23 (vii) Whether the present intentions of the tendering party are
24 to use the bonds for payment of special taxes or the purchase of
25 property at a foreclosure sale pursuant to this section or Section
26 53356.8. This statement of present intentions shall not be construed
27 to be binding on the tendering party.

28 (viii) The status of the bond redemption fund, construction fund,
29 reserve fund, and any other funds of the district, and the special
30 tax delinquency rate of the district, all of which data shall be the
31 most recent available from the district and, in any event, shall
32 apply to the state of the funds after the most recent payment of
33 principal and interest on the bonds. The district shall provide the
34 necessary data to the property owner within 10 days of receiving
35 a written request and may charge a reasonable fee not to exceed
36 its actual costs of providing the data. The district shall
37 simultaneously release the same information to the general public.
38 The property shall also provide the percentage of the delinquency
39 attributable to the tendering party or any person affiliated with or
40 related to the tendering party, or any employee, agent, or

1 representative of the tendering party, for each of the three most
2 recent fiscal years.

3 (ix) If the tendering party owns or leases property in the district
4 that issued the bonds, the development plans for that property and
5 an update on the current status of development of that property
6 and of any zoning, planning, or other permits or approvals needed
7 for development of the property to proceed.

8 (x) Any other material information available to the tendering
9 party and not generally available to the public that would
10 significantly affect the market value of the bonds of the district.

11 (C) The tendering party shall notify the legislative body of his
12 or her intent to make a tender offer or solicitation at least
13 simultaneously with making any offer or solicitation.

14 (D) The tendering party shall provide a copy of the solicitation
15 to the Department of ~~Corporations~~ *Business Oversight* prior to five
16 working days after notifying the legislative body pursuant to
17 subparagraph (C).

18 (3) The tendering property owner provides the legislative body
19 with a negative assurance from counsel representing the property
20 owner that no misleading or other information has come to the
21 opining party's attention after reasonable investigation, that would
22 lead the party providing the negative assurance to believe that the
23 tender was in violation of federal or state securities laws.

24 (4) The tendering property owner delivers to the legislative body
25 of the district that issued the bonds subject to the tender, a
26 certificate to the effect that the tender information is accurate in
27 all material respects and does not omit to state a material fact
28 necessary in order to make the statements included in the tender
29 information not misleading, except that the certificate need not
30 provide any assurances as to the accuracy of the information as to
31 the bond fund balances and tax payment information provided by
32 the district.

33 (c) The provisions of this subdivision apply to any tender of
34 bonds pursuant to this section by any owner of property within the
35 district who is not delinquent in paying special taxes on any
36 property within the district. A person subject to this subdivision
37 shall be deemed to be a person whose relationship to the issuer
38 may give him or her access, directly or indirectly, to material
39 information about the issuer not generally available to the public,
40 and the provisions of Section 25402 of the Corporations Code

1 apply to any purchase or sale of securities by that person in
2 connection with the tender transaction. For purposes of this
3 subdivision, the “issuer” includes the district, the local agency that
4 created the district, and any owner of property within the district.
5 At any time prior to tendering bonds to the district pursuant to this
6 section, any person subject to this subdivision shall deliver to the
7 legislative body of the district a certificate that he or she has
8 complied with this subdivision and applicable federal and state
9 securities laws.

10 SEC. 61. Section 53638 of the Government Code is amended
11 to read:

12 53638. (a) The deposit shall not exceed the shareholder’s
13 equity of any depository bank. For the purposes of this subdivision,
14 shareholder’s equity shall be determined in accordance with Section
15 ~~448~~ 463 of the Financial Code, but shall be deemed to include
16 capital notes and debentures.

17 (b) The deposit shall not exceed the total of the net worth of
18 any depository savings association or federal association, except
19 that deposits not exceeding a total of five hundred thousand dollars
20 (\$500,000) may be made to a savings association or federal
21 association without regard to the net worth of that depository, if
22 such deposits are insured or secured as required by law.

23 (c) The deposit to the share accounts of any regularly chartered
24 credit union shall not exceed the total of the unimpaired capital
25 and surplus of the credit union, as defined by rule of the
26 Commissioner of Financial Institutions, except that the deposit to
27 any credit union share account in an amount not exceeding five
28 hundred thousand dollars (\$500,000) may be made if the share
29 accounts of that credit union are insured or guaranteed pursuant
30 to Section 14858 of the Financial Code or are secured as required
31 by law.

32 (d) The deposit in investment certificates of a federally insured
33 industrial loan company shall not exceed the total of the unimpaired
34 capital and surplus of the insured industrial loan company.

35 SEC. 62. Section 54956.87 of the Government Code is amended
36 to read:

37 54956.87. (a) Notwithstanding any other provision of this
38 chapter, the records of a health plan that is licensed pursuant to
39 the Knox-Keene Health Care Service Plan Act of 1975 (Chapter
40 2.2 (commencing with Section 1340) of Division 2 of the Health

1 and Safety Code) and that is governed by a county board of
2 supervisors, whether paper records, records maintained in the
3 management information system, or records in any other form,
4 that relate to provider rate or payment determinations, allocation
5 or distribution methodologies for provider payments, formulas or
6 calculations for these payments, and contract negotiations with
7 providers of health care for alternative rates are exempt from
8 disclosure for a period of three years after the contract is fully
9 executed. The transmission of the records, or the information
10 contained therein in an alternative form, to the board of supervisors
11 shall not constitute a waiver of exemption from disclosure, and
12 the records and information once transmitted to the board of
13 supervisors shall be subject to this same exemption.

14 (b) Notwithstanding any other provision of law, the governing
15 board of a health plan that is licensed pursuant to the Knox-Keene
16 Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing
17 with Section 1340) of Division 2 of the Health and Safety Code)
18 and that is governed by a county board of supervisors may order
19 that a meeting held solely for the purpose of discussion or taking
20 action on health plan trade secrets, as defined in subdivision (f),
21 shall be held in closed session. The requirements of making a
22 public report of action taken in closed session, and the vote or
23 abstention of every member present, may be limited to a brief
24 general description without the information constituting the trade
25 secret.

26 (c) Notwithstanding any other provision of law, the governing
27 board of a health plan may meet in closed session to consider and
28 take action on matters pertaining to contracts and contract
29 negotiations by the health plan with providers of health care
30 services concerning all matters related to rates of payment. The
31 governing board may delete the portion or portions containing
32 trade secrets from any documents that were finally approved in
33 the closed session held pursuant to subdivision (b) that are provided
34 to persons who have made the timely or standing request.

35 (d) Nothing in this section shall be construed as preventing the
36 governing board from meeting in closed session as otherwise
37 provided by law.

38 (e) The provisions of this section shall not prevent access to any
39 records by the Joint Legislative Audit Committee in the exercise
40 of its powers pursuant to Article 1 (commencing with Section

1 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The
2 provisions of this section also shall not prevent access to any
3 records by the Department of ~~Corporations~~ *Business Oversight* in
4 the exercise of its powers pursuant to Article 1 (commencing with
5 Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety
6 Code.

7 (f) For purposes of this section, “health plan trade secret” means
8 a trade secret, as defined in subdivision (d) of Section 3426.1 of
9 the Civil Code, that also meets both of the following criteria:

10 (1) The secrecy of the information is necessary for the health
11 plan to initiate a new service, program, marketing strategy, business
12 plan, or technology, or to add a benefit or product.

13 (2) Premature disclosure of the trade secret would create a
14 substantial probability of depriving the health plan of a substantial
15 economic benefit or opportunity.

16 SEC. 63. Section 1341.9 of the Health and Safety Code, as
17 added by Section 31 of Chapter 525 of the Statutes of 1999, is
18 repealed.

19 ~~1341.9. The director and department succeed to, and are vested~~
20 ~~with, all duties, powers, purposes, responsibilities, and jurisdiction~~
21 ~~of the Commissioner of Corporations and the Department of~~
22 ~~Corporations as they relate to the Department of Corporations’~~
23 ~~Health Plan Program, health care service plans, and the health care~~
24 ~~service plan business, including those powers and duties specified~~
25 ~~in this chapter. Nothing in this section abrogates, limits, diminishes,~~
26 ~~or otherwise restricts the duties, powers, purposes, responsibilities,~~
27 ~~and jurisdictions of the Commissioner of Corporations and the~~
28 ~~Department of Corporations under the Investment Program, the~~
29 ~~Financial Services Program, and the other laws in which~~
30 ~~jurisdiction is vested in the Commissioner of Corporations and the~~
31 ~~Department of Corporations.~~

32 SEC. 64. Section 1341.10 of the Health and Safety Code is
33 amended to read:

34 1341.10. The department may use the unexpended balance of
35 funds available for use in connection with the performance of the
36 functions of the Department of ~~Corporations~~ *Business Oversight*
37 to which the department succeeds pursuant to Section 1341.9.

38 SEC. 65. Section 1341.11 of the Health and Safety Code is
39 amended to read:

1 1341.11. All officers and employees of the Department of
2 ~~Corporations~~ *Business Oversight* who, on the operative date of
3 this section, are performing any duty, power, purpose,
4 responsibility, or jurisdiction to which the department succeeds,
5 who are serving in the state civil service, other than as temporary
6 employees, and engaged in the performance of a function vested
7 by the department by Section 1341.9, shall be transferred to the
8 department. The status, positions, and rights of those persons shall
9 not be affected by the transfer and shall be retained by those
10 persons as officers and employees of the department, pursuant to
11 the State Civil Service Act (Part 2 (commencing with Section
12 18500) of Division 5 of Title 2 of the Government Code), except
13 as to positions exempted from civil service.

14 SEC. 66. Section 1341.12 of the Health and Safety Code is
15 amended to read:

16 1341.12. The department shall have possession and control of
17 all records, papers, offices, equipment, supplies, moneys, funds,
18 appropriations, licenses, permits, agreements, contracts, claims,
19 judgments, land, and other property, real or personal, connected
20 with the administration of, or held for the benefit or use of, the
21 Department of ~~Corporations~~ *Business Oversight* for the
22 performance of the functions transferred to the department by
23 Section 1341.9.

24 SEC. 67. Section 1341.14 of the Health and Safety Code is
25 amended to read:

26 1341.14. (a) Any regulation, order, or other action, adopted,
27 prescribed, taken, or performed by the Department of ~~Corporations~~
28 *Business Oversight* or by an officer of the Department of
29 ~~Corporations~~ *Business Oversight* in the administration of a program
30 or the performance of a duty, responsibility, or authorization
31 transferred to the department by Section 1341.9 shall remain in
32 effect and shall be deemed to be a regulation, order, or action of
33 the department.

34 (b) No suit, action, or other proceeding lawfully commenced
35 by or against the Department of ~~Corporations~~ *Business Oversight*
36 or any other officer of the state, in relation to the administration
37 of any program or the discharge of any duty, responsibility, or
38 authorization transferred to the department by Section 1341.9 shall
39 abate by reason of the transfer of the program, duty, responsibility,
40 or authorization.

SEC. 68. Section 1280.7 of the Insurance Code is amended to read:

1280.7. This chapter and the other provisions of this code, except as set forth in this paragraph, shall not apply to or affect unincorporated interindemnity or reciprocal or interinsurance contracts between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code, whose members consist solely of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against those members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration. However, interindemnity, reciprocal, or interinsurance contracts with respect to the following types of claims, in addition to medical malpractice claims, may be entered into in conjunction with contracts with respect to medical malpractice claims if the reserve trust fund is at least twenty million dollars (\$20,000,000):

(1) Bodily injury or property damage arising out of the conduct and of the operations of the member's professional practice occurring on the member's premises.

(2) Officers', directors', and administrators' liability, to the extent that the member's professional practice is operated as a professional corporation or group.

(3) Nonowned automobile coverage.

The provisions of Chapter 3 (commencing with Section 330) of Part 1 of Division 1 shall apply to unincorporated interindemnity or reciprocal or interinsurance contracts. Those unincorporated interindemnity or reciprocal or interinsurance contracts shall comply with all of the following requirements:

(a) Each participating member shall enter into and, concurrently therewith, receive an executed copy of a trust agreement, which shall govern the collection and disposition of all funds of the interindemnity arrangement.

The trust agreement shall, at a minimum, contain provision for all the following matters:

(1) An initial trust corpus of not less than ten million dollars (\$10,000,000), which corpus shall be a trust fund to secure enforcement of the interindemnity arrangement. The average

1 contribution to the initial trust corpus shall be not less than twenty
2 thousand dollars (\$20,000) per member participating in the
3 interindemnity arrangement. The average contribution to the trust
4 fund shall continue at all times to be not less than twenty thousand
5 dollars (\$20,000) per participating member unless the
6 interindemnity arrangement is qualified to admit members under
7 the terms of subdivision (k). No such interindemnity arrangement
8 shall become operative until the requisite minimum reserve trust
9 fund has been established by contributions from not fewer than
10 500 participating members.

11 (2) The reserve trust fund created by the trust agreement shall
12 be administered by a board of trustees of three or more members,
13 all of whom shall be physicians and surgeons licensed in California,
14 participating members in the interindemnity arrangement, and
15 elected biennially or more frequently by at least a majority of all
16 members participating in the interindemnity arrangement.

17 (3) The members of the board of trustees are fiduciaries and the
18 board shall be the custodian of all funds of the interindemnity
19 arrangement, and all those funds shall be deposited in the bank or
20 banks and savings and loan associations in California as the board
21 may designate. Each account shall require two or more signatories
22 for withdrawal of funds in excess of ten thousand dollars (\$10,000).
23 The authorized signatories shall be appointed by the board and, as
24 to any withdrawal in excess of one hundred thousand dollars
25 (\$100,000), at least one of the two or more authorized signatories
26 shall be a physician and surgeon licensed in California and a
27 participating member in the interindemnity arrangement. Each
28 signatory on those accounts shall maintain, at all times while
29 empowered to draw on those funds, for the benefit of the
30 interindemnity arrangement, a bond against loss suffered through
31 embezzlement, mysterious disappearance, holdup or burglary, or
32 other loss issued by a bonding company licensed to do business
33 in California in a penal sum of not less than one hundred thousand
34 dollars (\$100,000).

35 (4) All funds held in trust that are in excess of current financial
36 needs shall be invested and reinvested from time to time, under
37 the direction of the board of trustees, in eligible securities, as
38 defined in Section 16430 of the Government Code, in portfolios
39 of eligible securities, in exchange traded financial futures contracts
40 or exchange traded options contracts to hedge investment in those

1 eligible securities, or in certificates of deposits or time deposits
2 issued by banks and savings and loan associations in California
3 duly insured by instrumentalities of the United States government.

4 Pursuant to the authority contained in Section 1 of Article XV
5 of the California Constitution, the restrictions upon rates of interest
6 contained in Section 1 of Article XV of the California Constitution
7 shall not apply to any obligations of, loans made by, or
8 forbearances of, any trust established by a cooperative corporation
9 providing indemnity pursuant to this section.

10 (5) The income earned on the corpus of the trust fund shall be
11 the source for the payment of the claims, costs, judgments,
12 settlements, and costs of administration contemplated by the
13 interindemnity arrangement, and to the extent the income is
14 insufficient for those purposes, the board of trustees shall have the
15 power and authority to assess participating members for all
16 amounts necessary to meet the obligations of the interindemnity
17 arrangement in accordance with the terms thereof. If necessary in
18 the best interests of the interindemnity arrangement, the board of
19 trustees may make assessments to increase the corpus of the trust
20 fund in accordance with the terms of the interindemnity
21 arrangement. Any assessment levied against a member shall be
22 the personal obligation of the member. Any person who obtains a
23 final judgment of recovery for medical malpractice or other liability
24 authorized by this section against a member of the interindemnity
25 arrangement shall have, in addition to any other remedy, the right
26 to assert directly all rights to indemnification that the judgment
27 debtor has under the interindemnity arrangement. The final
28 judgment shall be a lien on the reserve trust fund to secure payment
29 of the judgment, limited to the extent of the judgment debtor's
30 rights to indemnification.

31 Any change in the assessment agreement between the
32 interindemnity arrangement and its membership shall be submitted
33 to the entire membership for ratification. If the ratification process
34 is to be performed by a mail ballot, a ballot shall be sent to each
35 member by first-class mail, postage prepaid. Within 45 days after
36 the posted date on the mail ballot, each member who decides to
37 vote on the assessment change shall return his or her ballot to the
38 interindemnity arrangement for the tallying of the ballots. An
39 affirmative vote of 75 percent of those voting shall be required to
40 effectuate any change in the assessment agreement.

1 If a change in the assessment agreement is to be submitted to
2 members at a properly called meeting, the membership shall be
3 notified of the meeting and the proposed assessment change by
4 first-class mail, postage prepaid, posted at least 45 days prior to
5 the meeting. Seventy-five percent of those present in person or by
6 proxy at the meeting shall be required to effectuate any change in
7 the assessment agreement.

8 (6) Each participating member shall be covered by the
9 interindemnity arrangement for not less than one million dollars
10 (\$1,000,000) for each occurrence of professional negligence or
11 other liability authorized by this section, with the terms and
12 conditions of the coverage to be specified in the trust agreement,
13 except that the interindemnity arrangement may provide
14 participating members with an aggregate limit for all payments on
15 behalf of the member and may provide participating members with
16 less than one million dollars (\$1,000,000) of coverage for each
17 occurrence of professional negligence or other liability authorized
18 by this section if the interindemnity arrangement obtains for the
19 benefit of the members reinsurance of excess limits coverage in
20 an amount that when added to the coverage provided by the
21 interindemnity arrangement would equal not less than one million
22 dollars (\$1,000,000) for each occurrence of professional negligence
23 or other liability authorized by this section.

24 Any change in the coverage provided by the trust agreement
25 between the interindemnity arrangement and its membership shall
26 be submitted to the entire membership for ratification. If the
27 ratification process is to be performed by a mail ballot, a ballot
28 shall be sent to each member by first-class mail, postage prepaid.
29 Within 45 days after the posted date on the mail ballot, each
30 member who decides to vote on the coverage change shall return
31 his or her ballot to the interindemnity arrangement for the tallying
32 of the ballot. An affirmative vote of 75 percent of those voting
33 shall be required to effectuate any change in the coverage provided
34 by the trust agreement, except that at least 50 percent of the entire
35 membership must agree to any change.

36 If any change is to be submitted to members at a properly called
37 meeting, the membership shall be notified of the meeting and the
38 proposed coverage change by first-class mail, postage prepaid,
39 posted at least 45 days prior to the meeting. An affirmative vote
40 of 75 percent of the membership present at the meeting, in person

1 or by proxy, shall be required to effectuate any change, except that
2 at least 50 percent of the entire membership must agree to any
3 change.

4 (7) Withdrawal of all, or any portion of, the corpus of the reserve
5 trust fund shall be upon the written authorization signed by at least
6 two-thirds of the members of the board of trustees.

7 (8) The board of trustees shall cause both of the following to
8 be furnished to each member participating in the interindemnity
9 arrangement, and to be filed with the Commissioner of
10 ~~Corporations~~ *Business Oversight*:

11 (A) Within 90 days after the end of each fiscal year, a statement
12 of the assets and liabilities of the interindemnity arrangement as
13 of the end of that year, a statement of the revenue and expenditures
14 of the interindemnity arrangement, and a statement of the changes
15 in corpus of the reserve trust for that year, in each case
16 accompanied by a certificate signed by a firm of independent
17 certified public accountants selected by the board of trustees
18 indicating that the firm has conducted an audit of those statements
19 in accordance with generally accepted auditing standards and
20 indicating the results of the audit.

21 (B) Within 45 days after the end of each of the first three
22 quarterly periods of each fiscal year, a statement of the assets and
23 liabilities of the interindemnity arrangement as of the end of the
24 quarterly period, a statement of the revenue and expenditures of
25 the interindemnity arrangement, and a statement of the changes in
26 corpus of the reserve trust for the period, in each case accompanied
27 by a certificate signed by a majority of the members of the board
28 of trustees to the effect that the statements were prepared from the
29 official books and records of the interindemnity arrangement.

30 (C) In addition to the statements required to be filed pursuant
31 to this paragraph, the board of trustees shall annually file with the
32 Commissioner of ~~Corporations~~ *Business Oversight* an authorization
33 for disclosure to the commissioner of all financial records
34 pertaining to the interindemnity arrangement. For the purpose of
35 this subparagraph, the authorization for disclosure shall also include
36 the financial records of any association, partnership, or corporation
37 that has management or control of the funds or the operation of
38 the interindemnity arrangement.

39 (9) The trust agreement shall also provide for all the following:

1 (A) In the event a participating member who is in full
2 compliance with the trust agreement, including the payment of all
3 outstanding dues and assessments, dies, the initial contribution
4 made by the decedent shall be returned to the member's estate or
5 designated beneficiary; the indemnity coverage shall continue for
6 the benefit of the decedent's estate in respect of occurrences during
7 the time the decedent was a participating member; and neither the
8 person receiving the repayment of the initial contribution nor the
9 decedent's estate shall be responsible for any assessments levied
10 following the death of the member.

11 (B) A participating member who is then in full compliance with
12 the trust agreement and who has reached the age of 65 and who
13 has retired completely from the practice of medicine may elect to
14 retire from the interindemnity arrangement, in which case the
15 member shall not be responsible for assessments levied following
16 the date notice of retirement is given to the trust. Following that
17 retirement, the indemnity coverage shall continue for the benefit
18 of the member in respect of occurrences prior to the time the
19 member retired from the interindemnity arrangement. That retired
20 member's initial contribution shall be repaid 10 years from the
21 date the notice of retirement is received by the trust, or an earlier
22 date as specified in the trust agreement. The board of trustees may
23 reduce the age for retirement to not less than 55 years subject to
24 all other requirements in this paragraph and any additional
25 requirements deemed necessary by the board.

26 (C) During any period in which a participating member, who
27 is then in full compliance with the trust agreement, has, in the
28 judgment of the board of trustees, become unable to perform any
29 and every duty of his or her regular professional occupation, the
30 participating member may request disability status in accordance
31 with the terms of the interindemnity arrangement. During any
32 period of disability status, the member shall not be responsible for
33 assessments levied during the period and, if so provided in the
34 interindemnity arrangement, all indemnity coverage, both as to
35 defense and payment of claims, shall terminate as to occurrences
36 arising out of the actions of the participating member during the
37 period of disability status.

38 (D) In the event a participating member fails to pay any
39 assessment when due, the board of trustees may terminate that
40 person's membership status if the failure to pay is not cured within

1 30 days from the date the assessment was due. Upon that
2 termination the former participating member shall not be entitled
3 to the return of all or any part of his or her initial contribution, and
4 the indemnity coverage shall thereupon terminate as to all claims
5 then pending against that person and in respect to all occurrences
6 prior to the date of that termination of membership. However, in
7 the event the interindemnity arrangement is then providing legal
8 defense services to that person, the interindemnity arrangement
9 shall continue to provide those services for a period of 10 days
10 following that termination.

11 (E) In the event a participating member fails to comply with
12 any provision of the trust agreement (other than a failure to pay
13 assessments when due), the board of trustees may terminate that
14 person's membership status if the failure to comply is not cured
15 within 60 days from the date the person is notified of the failure,
16 provided that before that membership status may be terminated
17 the person shall be given the right to call for a hearing before the
18 board of trustees (to be held before the expiration of the 60-day
19 period), at which hearing the person shall be given the opportunity
20 to demonstrate to the board of trustees that no failure to comply
21 has occurred or, if it has occurred, that it has been cured. Upon
22 that termination, the former participating member shall not be
23 entitled to the return of all or any part of his or her initial
24 contribution, and the indemnity coverage shall thereupon terminate
25 as to all claims then pending against the person and in respect to
26 all occurrences prior to the date of the termination of membership.
27 However, in the event the interindemnity arrangement is then
28 providing legal defense services to that person, the interindemnity
29 arrangement shall continue to provide those services for a period
30 of 10 days following the termination.

31 (F) A participating member who is then in full compliance with
32 the trust agreement may elect voluntarily to terminate his or her
33 membership in the interindemnity arrangement. Upon that
34 voluntary termination, that person may further elect to cease being
35 responsible for future assessments, or to continue to pay those
36 assessments until the time as the person's initial contribution is
37 repaid. In the event the person elects to cease being responsible
38 for future assessments, the indemnity coverage shall thereupon
39 terminate and the person shall either be responsible for his or her
40 own exposure for acts committed while a participating member in

1 the interindemnity arrangement, or he or she may request the
2 interindemnity arrangement to purchase or provide, at the cost of
3 the person, coverage for that exposure. The initial contribution of
4 the person shall be repaid on the 10th anniversary of the date the
5 contribution was made. In the event the person elects to continue
6 to be responsible for assessments, the indemnity coverage shall
7 continue in respect of occurrences prior to the date of the voluntary
8 termination, and the initial contribution of the person shall be
9 repaid at the time as the board of trustees is satisfied that (i) there
10 are no claims pending against the person in respect of occurrences
11 during the time the person was a participating member, and (ii)
12 the statute of limitations has run on all claims that might be asserted
13 against that person in respect of occurrences during that time. In
14 no event shall that repayment be made earlier than the 10th
15 anniversary of the date the contribution was made.

16 Any person whose membership in an interindemnity arrangement
17 is involuntarily terminated for failure to pay assessments or who
18 voluntarily terminates that membership and elects to be responsible
19 for his or her own exposure for acts committed while a participating
20 member, shall not be eligible to become a member of any other
21 interindemnity arrangement for a period of five years after the
22 termination unless, on the effective date of the act which amended
23 this section during the 1985–86 Regular Session, the person had
24 on file with the Department of ~~Corporations~~ *Business Oversight*
25 a copy of a subscription agreement signifying the person's
26 agreement to transfer membership or had paid a minimum of ten
27 thousand dollars (\$10,000) to another interindemnity arrangement
28 that was granted a permit to organize prior to January 1, 1985.

29 (G) The board of trustees shall have the right to terminate the
30 membership of a participating member if the board of trustees
31 determines that the termination is in the best interests of the
32 interindemnity arrangement even though that person has complied
33 with all of the provisions of the trust agreement. A termination
34 may be effected only if at least two-thirds of the members of the
35 board of trustees indicate in writing their decision to terminate. If
36 the board of trustees proposes to terminate a member, the member
37 shall have the right to call a special meeting of all participating
38 members in accordance with the rules established by the board of
39 trustees for the purpose of voting on whether or not the member
40 shall be terminated. The member shall not be terminated if at least

1 two-thirds of the participating members present, in person or by
2 proxy, indicate that the member should not be terminated. In the
3 event a member is terminated, the person shall elect either: (i) to
4 request the return of his or her initial contribution, in which case
5 the contribution shall be repaid and the indemnity coverage shall
6 thereupon terminate as to all claims then pending against the person
7 and in respect to all occurrences prior to the date of the termination
8 of membership. However, in the event the interindemnity
9 arrangement is then providing legal defense services to the person,
10 the interindemnity arrangement shall continue to provide those
11 services for a period of 30 days to enable the person to assume his
12 or her own defense; or (ii) to release all rights to the return of the
13 initial contribution, in which case the indemnity coverage shall
14 continue for the benefit of the member in respect of occurrences
15 during the time the person was a participating member and the
16 person shall have no responsibility for assessments levied following
17 that termination. The interindemnity arrangement may provide
18 that if a member is terminated and fails to make the election set
19 forth herein within 45 days of the date of notification of termination
20 of membership, the participating member shall be deemed to have
21 elected to release all rights to a return of his or her initial
22 contribution, in which case indemnity coverage shall apply for the
23 benefit of the member with respect to occurrences occurring prior
24 to the termination.

25 (10) Each member participating in the interindemnity
26 arrangement shall have the right of access to, and the inspection
27 of, the books and records of the interindemnity arrangement, which
28 rights shall be similar to the corporate shareholders pursuant to
29 Section 3003 of the Corporations Code, or, commencing January
30 1, 1977, Sections 1600 to 1605, inclusive, of the Corporations
31 Code.

32 (11) There shall be a meeting of all members participating in
33 the interindemnity arrangement, at least annually, after not less
34 than 10 days' written notice has been given, at a location
35 reasonably convenient to the participating members and on a date
36 that is within a reasonable period of time following the distribution
37 of the annual financial statements.

38 (12) Notwithstanding Sections 12453 and 12703 of the
39 Corporations Code, on any matter to be voted upon by the
40 membership at either a regular or special meeting, a member shall

1 have the right to vote in person or by written proxy filed with the
2 corporate secretary prior to the meeting. No proxy shall be made
3 irrevocable, nor be valid beyond the earliest of the following dates:

- 4 (A) The date of expiration set forth in the proxy.
- 5 (B) The date of termination of membership.
- 6 (C) Eleven months from the date of execution of the proxy.
- 7 (D) Such time as may be specified in the bylaws, not to exceed
8 11 months.

9 (13) The interindemnity arrangement, and the reserve trust fund
10 incident thereto, shall be subject to termination at any time by the
11 vote or written consent of not less than three-fourths of the
12 participating members.

13 (b) The board of trustees shall cause to be recorded with the
14 office of the county recorder of the county of the principal place
15 of business of the interindemnity arrangement within 90 days
16 following the end of each fiscal year, a written statement, executed
17 by a majority of the board of trustees under penalty of perjury,
18 reciting that each member participating in the interindemnity
19 arrangement was mailed a copy of the annual financial statement
20 and quarterly audit certificates by first-class mail, postage prepaid,
21 required pursuant to paragraph (8) of subdivision (a).

22 (c) Each person solicited to become a participating member in
23 an interindemnity arrangement shall receive in writing, at least 48
24 hours prior to the execution by the prospective participating
25 member of the trust agreement, and at least 48 hours prior to the
26 payment by the prospective participating member of any
27 consideration in connection with the interindemnity arrangements,
28 the following information:

29 (1) A copy of the articles of incorporation and bylaws of the
30 cooperative corporation and a copy of the form of trust agreement
31 to be executed by the prospective participating member.

32 (2) A disclosure statement regarding the interindemnity
33 arrangement. The disclosure statement shall contain on the first
34 or cover page a legend in boldface type reading substantially as
35 follows:

36 “THE INTERINDEMNITY ARRANGEMENT
37 CONTEMPLATED HEREIN PROVIDES THAT
38 PARTICIPATING MEMBERS HAVE UNLIMITED PERSONAL
39 LIABILITY FOR ASSESSMENTS THAT MAY BE LEVIED
40 TO PAY FOR THE PROFESSIONAL NEGLIGENCE OR

1 OTHER LIABILITY AUTHORIZED BY THIS SECTION. NO
2 ASSURANCES CAN BE GIVEN REGARDING THE AMOUNT
3 OR FREQUENCY OF ASSESSMENTS WHICH MAY BE
4 LEVIED, OR THAT ALL PARTICIPATING MEMBERS WILL
5 MAKE TIMELY PAYMENT OF THEIR ASSESSMENTS TO
6 COVER THE PROFESSIONAL NEGLIGENCE OR OTHER
7 LIABILITY AUTHORIZED BY THIS SECTION.”

8 (3) The disclosure statement shall further contain all of the
9 following information:

10 (A) The amount, nature, and terms and conditions of the
11 professional negligence or other liability relating to a member’s
12 professional practice coverage available under the interindemnity
13 arrangement.

14 (B) The amount of the initial contribution required of each
15 participating member and a statement of the minimum number of
16 members and aggregate contributions required for the
17 interindemnity arrangement to commence.

18 (C) The names, addresses, and professional experience of each
19 member of the board of trustees.

20 (D) The requirements for admission as a participating member.

21 (E) A statement of the services to be provided under the
22 interindemnity arrangement to each participating member.

23 (F) A statement regarding the obligation of each member to pay
24 assessments and the consequences for failure to do so.

25 (G) A statement of the rights and obligations of a participating
26 member in the event the member dies, retires, becomes disabled,
27 or terminates participation for any reason, or the interindemnity
28 arrangement terminates for any reason.

29 (H) A statement regarding the services to be provided, indicating
30 whether these services will be delegated to others pursuant to a
31 contractual arrangement. For those services delegated to others
32 pursuant to a contractual arrangement, a statement fully disclosing
33 and itemizing all consideration received directly or indirectly under
34 the arrangement, and indicating what the consideration is for, and
35 how, when, and to whom the consideration will be paid.

36 (I) A statement of the voting rights of the members and the
37 circumstances under which participation of a member may be
38 terminated and under which the interindemnity arrangement may
39 be terminated.

1 (J) If any statement of estimated or projected financial
2 information for the interindemnity arrangement is used, a statement
3 of the estimation or projection and a summary of the data and
4 assumptions upon which it is based.

5 (4) A list with the names and addresses of current participating
6 members of the interindemnity arrangement.

7 (d) No officer, director, trustee, employee, or member of the
8 interindemnity arrangement or the cooperative corporation shall
9 receive, or be entitled to receive, any payment, bonus, salary,
10 income, compensation, or other benefit whatsoever, either from
11 the reserve trust fund or the income therefrom or from any other
12 funds of the interindemnity arrangement or the members thereof
13 based on the number of participating members, or the amount of
14 the reserve trust fund or other funds of the interindemnity
15 arrangement.

16 (e) A peer review committee or committees shall be established
17 by the trust agreement to review the qualifications of any physician
18 and surgeon to participate or continue to participate in the
19 interindemnity arrangement, and to review the quality of medical
20 services rendered by any participating member, as well as the
21 validity of medical malpractice claims made against participating
22 members. Any physician and surgeon, prior to becoming a
23 participating member of the interindemnity arrangement, shall be
24 reviewed and approved by a majority of the members of the peer
25 review committee. No peer review committee, or any of its
26 members, shall be liable for any action taken by the committee in
27 reviewing the qualifications of a physician and surgeon to
28 participate or continue to participate, or the quality of medical
29 services rendered, or the validity of a medical malpractice claim,
30 unless it is alleged and proved that the action was taken with actual
31 malice.

32 (f) The following are hereby defined as unfair methods of
33 competition and deceptive acts or practices with respect to
34 cooperative corporations or interindemnity arrangements provided
35 for in this section:

36 (1) Making any false or misleading statement as to, or issuing,
37 circulating, or causing to be made, issued, or circulated, any
38 estimate, illustration, circular, or statement misrepresenting the
39 terms of any interindemnity arrangement or the benefits or
40 advantages promised thereby, or making any misleading

1 representation or any misrepresentation as to the financial condition
2 of the interindemnity arrangement, or making any
3 misrepresentation to any participating member for the purpose of
4 inducing or tending to induce the member to lapse, forfeit, or
5 surrender his or her rights to indemnification under the
6 interindemnity arrangement. It shall be a false or misleading
7 statement to state or represent that a cooperative corporation or
8 interindemnity arrangement is or constitutes “insurance” or an
9 “insurance company” or an “insurance policy.”

10 (2) Making or disseminating or causing to be made or
11 disseminated before the public in this state, in any newspaper or
12 other publication, or any advertising device, or by public outcry
13 or proclamation, or in any other manner or means whatsoever, any
14 statement containing any assertion, representation, or statement
15 with respect to those cooperative corporations or interindemnity
16 arrangements, or with respect to any person in the conduct of those
17 cooperative corporations or interindemnity arrangements, which
18 is untrue, deceptive, or misleading, and which is known, or which
19 by the exercise of reasonable care should be known, to be untrue,
20 deceptive, or misleading. It shall be a false or misleading statement
21 to state or represent that a cooperative corporation or
22 interindemnity arrangement is or constitutes “insurance” or an
23 “insurance company” or an “insurance policy.”

24 (3) Entering into any agreement to commit, or by any concerted
25 action committing, any act of boycott, coercion, or intimidation
26 resulting in or tending to result in an unreasonable restraint of, or
27 monopoly in, those cooperative corporations or interindemnity
28 arrangements.

29 (4) Filing with any supervisory or other public official, or
30 making, publishing, disseminating, circulating, or delivering to
31 any person, or placing before the public, or causing directly or
32 indirectly, to be made, published, disseminated, circulated, or
33 delivered to any person, or placed before the public any false
34 statement of financial condition of a cooperative corporation or
35 interindemnity arrangement with intent to deceive.

36 (5) Making any false entry in any book, report, or statement of
37 a cooperative corporation or interindemnity arrangement with
38 intent to deceive any agent or examiner lawfully appointed to
39 examine into its condition or into any of its affairs, or any public
40 official to whom a cooperative corporation or interindemnity

1 arrangement is required by law to report, or who has authority by
2 law to examine into its condition or into any of its affairs, or, with
3 like intent, willfully omitting to make a true entry of any material
4 fact pertaining to a cooperative corporation or interindemnity
5 arrangement in any book, report, or statement of a cooperative
6 corporation or interindemnity arrangement.

7 (6) Making or disseminating, or causing to be made or
8 disseminated, before the public in this state, in any newspaper or
9 other publication, or any other advertising device, or by public
10 outcry or proclamation, or in any other manner or means whatever,
11 whether directly or by implication, any statement that a cooperative
12 corporation or interindemnity arrangement is a member of the
13 California Insurance Guarantee Association, or insured against
14 insolvency as defined in Section 119.5. This paragraph shall not
15 be interpreted to prohibit any activity of the California Insurance
16 Guarantee Association or of the commissioner authorized, directly
17 or by implication, by Article 14.2 (commencing with Section 1063)
18 of Chapter 1.

19 (7) Knowingly committing or performing with a frequency as
20 to indicate a general business practice any of the following unfair
21 claims settlement practices:

22 (A) Misrepresenting to claimants pertinent facts or provisions
23 relating to any coverage at issue.

24 (B) Failing to acknowledge and act promptly upon
25 communications with respect to claims arising under those
26 interindemnity arrangements.

27 (C) Failing to adopt and implement reasonable standards for
28 the prompt investigation and processing of claims arising under
29 those interindemnity arrangements.

30 (D) Failing to affirm or deny coverage of claims within a
31 reasonable time after proof of claim requirements have been
32 completed and submitted by the participating member.

33 (E) Not attempting in good faith to effectuate prompt, fair, and
34 equitable settlements of claims in which liability has become
35 reasonably clear.

36 (F) Compelling participating members to institute litigation to
37 recover amounts due under an interindemnity arrangement by
38 offering substantially less than the amounts ultimately recovered
39 in actions brought by those participating members when those
40 participating members have made claims under those

1 interindemnity arrangements for amounts reasonably similar to
2 the amounts ultimately recovered.

3 (G) Attempting to settle a claim by a participating member for
4 less than the amount to which a reasonable person would have
5 believed he or she was entitled by reference to written or printed
6 advertising material accompanying or made part of an application
7 for membership in an interindemnity arrangement.

8 (H) Attempting to settle claims on the basis of an interindemnity
9 arrangement that was altered without notice to the participating
10 member.

11 (I) Failing, after payment of a claim, to inform participating
12 members, upon request by them, of the coverage under which
13 payment has been made.

14 (J) Making known to claimants a practice of the cooperative
15 corporation or interindemnity arrangement of appealing from
16 arbitration awards in favor of claimants for the purpose of
17 compelling them to accept settlements or compromises less than
18 the amount awarded in arbitration.

19 (K) Delaying the investigation or payment of claims by requiring
20 a claimant, or his or her physician, to submit a preliminary claim
21 report, and then requiring the subsequent submission of formal
22 proof of loss forms, both of which submissions contain
23 substantially the same information.

24 (L) Failing to settle claims promptly, where liability has become
25 apparent, under one portion of an interindemnity arrangement in
26 order to influence settlements under other portions of the
27 interindemnity arrangement.

28 (M) Failing to provide promptly a reasonable explanation of
29 the basis relied on in the interindemnity arrangement, in relation
30 to the facts of applicable law, for the denial of a claim or for the
31 offer of a compromise settlement.

32 (N) Directly advising a claimant not to obtain the services of
33 an attorney.

34 (O) Misleading a claimant as to the applicable statute of
35 limitations.

36 (g) Notwithstanding any contrary provisions of Part 2
37 (commencing with Section 12200) of Division 3 of Title 1 of the
38 Corporations Code, it shall not be necessary to hold a meeting of
39 members of the cooperative corporation for the purpose of electing
40 directors if the bylaws provide the election may be held by

1 first-class mail balloting. First-class mail balloting may also be
2 used in conjunction with a meeting at which directors are to be
3 elected and all mail ballots shall count toward establishing a
4 quorum for the meeting for the limited purpose of the issues set
5 forth in the mail ballot. Directors shall be elected as follows:

6 (1) The candidates receiving the highest number of votes, up to
7 the number of directors to be elected, by a specified date at least
8 45 days but not later than 60 days after the ballots are first mailed,
9 postage prepaid, to the members (or the date of a meeting of
10 members held in conjunction therewith) shall be elected.

11 (2) In the event that no candidate receives a majority of the
12 votes cast for a vacant office, a runoff election shall be held
13 between the two candidates receiving the highest number of votes
14 cast. The runoff election shall be held at least 45 days but not more
15 than 60 days after the ballots for the election are mailed, postage
16 prepaid. In the event that there is more than one office for which
17 no candidate receives a majority of the votes cast, the candidates
18 for the runoff shall be twice the number of vacant offices, and shall
19 be those persons who received the highest number of votes therefor.

20 Those first-class mail ballots shall be kept on file for a period
21 of three months after all vacant board positions have been filled,
22 and shall be subject to inspection at any reasonable time by any
23 members of the cooperative corporation.

24 (h) No officer, director, trustee, or member of the interindemnity
25 arrangement or the cooperative corporation, or any entity in which
26 that person has a material financial interest, shall enter into or
27 renew any transaction or contract with the trust unless the material
28 facts as to the transaction or contract and as to the interest of the
29 person are fully disclosed to the participating members, and the
30 transaction or contract is approved by an affirmative vote of at
31 least 75 percent of the membership present at a meeting, in person
32 or by proxy. If any transaction or contract is to be submitted to
33 members at a properly called meeting, the membership shall be
34 notified of the meeting and of the transaction or contract by
35 first-class mail, postage prepaid, at least 45 days prior to the
36 meeting.

37 (i) Services provided to the trust pursuant to a delegated
38 contractual arrangement shall be embodied in a written contract.
39 Each written contract shall provide for reasonable consideration
40 to the parties. In addition, each written contract shall be disclosed

1 annually to participating members in a disclosure report containing
2 the information described in subparagraph (H) of paragraph (3) of
3 subdivision (c). The disclosure report shall be sent to participating
4 members by first-class mail, postage prepaid, and shall be mailed
5 separately from any statements, records, or other documents. The
6 disclosure requirements of this subdivision shall apply to all
7 existing and future written contracts.

8 (j) Upon request of the Commissioner of ~~Corporations~~, *Business*
9 *Oversight*, an interindemnity arrangement shall immediately
10 forward to the commissioner a current list of participating
11 members, including the names, addresses, and telephone numbers
12 of those members.

13 (k) Notwithstanding any provision to the contrary, whenever
14 the membership of a cooperative organization, organized pursuant
15 to Part 2 (commencing with Section 12200) of Division 3 of Title
16 1 of the Corporations Code and consisting solely of physicians
17 and surgeons licensed in this state amounts to 2,000 or more
18 members and the trust fund is at least forty million dollars
19 (\$40,000,000), which is available to the public for malpractice
20 claims or other claims authorized by this section, the cooperative
21 is authorized to admit members without a contribution to that trust
22 fund if assessments are charged to each of those members within
23 the first 50 months in an amount equal to the amount of the
24 contribution to the reserve fund that would otherwise be required.

25 SEC. 69. Section 12693.35 of the Insurance Code is amended
26 to read:

27 12693.35. Participating health, dental, and vision plans shall
28 have, but need not be limited to, all of the following operating
29 characteristics satisfactory to the board in consultation with the
30 plan's licensing or regulatory oversight agency:

31 (a) Strong financial condition, including the ability to assume
32 the risk of providing and paying for covered services. A
33 participating plan may utilize reinsurance, provider risk sharing,
34 and other appropriate mechanisms to share a portion of the risk.

35 (b) Adequate administrative management.

36 (c) A satisfactory grievance procedure.

37 (d) Participating plans that contract with or employ health care
38 providers shall have mechanisms to accomplish all of the following,
39 in a manner satisfactory to the board:

40 (1) Review the quality of care covered.

1 (2) Review the appropriateness of care covered.

2 (3) Provide accessible health care services.

3 (e) (1) Before the effective date of the contract, the participating
4 health plan shall have devised a system for identifying in a simple
5 and clear fashion both in its own records and in the medical records
6 of subscribers the fact that the services provided are provided under
7 the program.

8 (2) Throughout the duration of the contract, the plan shall use
9 the system described in paragraph (1).

10 (f) Plans licensed by the Department of ~~Corporations~~ *Business*
11 *Oversight* shall be deemed to meet the requirements of subdivisions
12 (a) to (d), inclusive, of this section.

13 SEC. 70. Section 14053 of the Insurance Code is amended to
14 read:

15 14053. In lieu of the surety bond required by this article there
16 may be deposited with the State of California the sum of two
17 thousand dollars (\$2,000) in cash, or evidence of deposit of the
18 sum of two thousand dollars (\$2,000) in banks authorized to do
19 business in this state and insured by the Federal Deposit Insurance
20 Corporation, or investment certificates or share accounts in the
21 amount of two thousand dollars (\$2,000) issued by a savings
22 association doing business in this state and insured by the Federal
23 Deposit Insurance Corporation, or evidence of a certificate of funds
24 or share account of the sum of two thousand dollars (\$2,000) in a
25 credit union, as defined in Section 14000 of the Financial Code,
26 whose share deposits are guaranteed by the National Credit Union
27 Administration or guaranteed by any other agency approved by
28 the Department of ~~Financial Institutions~~ *Business Oversight*.

29 SEC. 71. Section 15036 of the Insurance Code is amended to
30 read:

31 15036. In lieu of the surety bond required by this chapter there
32 may be deposited with the State of California the sum of twenty
33 thousand dollars (\$20,000) in cash, or evidence of deposit of the
34 sum of twenty thousand dollars (\$20,000) in banks authorized to
35 do business in this state and insured by the Federal Deposit
36 Insurance Corporation, or investment certificates or share accounts
37 in the amount of twenty thousand dollars (\$20,000) issued by a
38 savings association doing business in this state and insured by the
39 Federal Deposit Insurance Corporation, or evidence of a certificate
40 of funds or share account of the sum of twenty thousand dollars

1 (\$20,000) in a credit union as defined in Section 14000 of the
2 Financial Code whose share deposits are guaranteed by the
3 National Credit Union Administration or guaranteed by any other
4 agency approved by the Department of ~~Financial Institutions~~.
5 *Business Oversight*.

6 SEC. 72. Section 4600.5 of the Labor Code is amended to read:

7 4600.5. (a) Any health care service plan licensed pursuant to
8 the Knox-Keene Health Care Service Plan Act, a disability insurer
9 licensed by the Department of Insurance, or any entity, including,
10 but not limited to, workers' compensation insurers and third-party
11 administrators authorized by the administrative director under
12 subdivision (e), may make written application to the administrative
13 director to become certified as a health care organization to provide
14 health care to injured employees for injuries and diseases
15 compensable under this article.

16 (b) Each application for certification shall be accompanied by
17 a reasonable fee prescribed by the administrative director, sufficient
18 to cover the actual cost of processing the application. A certificate
19 is valid for the period that the director may prescribe unless sooner
20 revoked or suspended.

21 (c) If the health care organization is a health care service plan
22 licensed pursuant to the Knox-Keene Health Care Service Plan
23 Act, and has provided the Managed Care Unit of the Division of
24 Workers' Compensation with the necessary documentation to
25 comply with this subdivision, that organization shall be deemed
26 to be a health care organization able to provide health care pursuant
27 to Section 4600.3, without further application duplicating the
28 documentation already filed with the Department of Managed
29 Health Care. These plans shall be required to remain in good
30 standing with the Department of Managed Health Care, and shall
31 meet the following additional requirements:

32 (1) Proposes to provide all medical and health care services that
33 may be required by this article.

34 (2) Provides a program involving cooperative efforts by the
35 employees, the employer, and the health plan to promote workplace
36 health and safety, consultative and other services, and early return
37 to work for injured employees.

38 (3) Proposes a timely and accurate method to meet the
39 requirements set forth by the administrative director for all carriers
40 of workers' compensation coverage to report necessary information

1 regarding medical and health care service cost and utilization, rates
2 of return to work, average time in medical treatment, and other
3 measures as determined by the administrative director to enable
4 the director to determine the effectiveness of the plan.

5 (4) Agrees to provide the administrative director with
6 information, reports, and records prepared and submitted to the
7 Department of Managed Health Care in compliance with the
8 Knox-Keene Health Care Service Plan Act, relating to financial
9 solvency, provider accessibility, peer review, utilization review,
10 and quality assurance, upon request, if the administrative director
11 determines the information is necessary to verify that the plan is
12 providing medical treatment to injured employees in compliance
13 with the requirements of this code.

14 Disclosure of peer review proceedings and records to the
15 administrative director shall not alter the status of the proceedings
16 or records as privileged and confidential communications pursuant
17 to Sections 1370 and 1370.1 of the Health and Safety Code.

18 (5) Demonstrates the capability to provide occupational
19 medicine and related disciplines.

20 (6) Complies with any other requirement the administrative
21 director determines is necessary to provide medical services to
22 injured employees consistent with the intent of this article,
23 including, but not limited to, a written patient grievance policy.

24 (d) If the health care organization is a disability insurer licensed
25 by the Department of Insurance, and is in compliance with
26 subdivision (d) of Sections 10133 and 10133.5 of the Insurance
27 Code, the administrative director shall certify the organization to
28 provide health care pursuant to Section 4600.3 if the director finds
29 that the plan is in good standing with the Department of Insurance
30 and meets the following additional requirements:

31 (1) Proposes to provide all medical and health care services that
32 may be required by this article.

33 (2) Provides a program involving cooperative efforts by the
34 employees, the employer, and the health plan to promote workplace
35 health and safety, consultative and other services, and early return
36 to work for injured employees.

37 (3) Proposes a timely and accurate method to meet the
38 requirements set forth by the administrative director for all carriers
39 of workers' compensation coverage to report necessary information
40 regarding medical and health care service cost and utilization, rates

1 of return to work, average time in medical treatment, and other
2 measures as determined by the administrative director to enable
3 the director to determine the effectiveness of the plan.

4 (4) Agrees to provide the administrative director with
5 information, reports, and records prepared and submitted to the
6 Department of Insurance in compliance with the Insurance Code
7 relating to financial solvency, provider accessibility, peer review,
8 utilization review, and quality assurance, upon request, if the
9 administrative director determines the information is necessary to
10 verify that the plan is providing medical treatment to injured
11 employees consistent with the intent of this article.

12 Disclosure of peer review proceedings and records to the
13 administrative director shall not alter the status of the proceedings
14 or records as privileged and confidential communications pursuant
15 to subdivision (d) of Section 10133 of the Insurance Code.

16 (5) Demonstrates the capability to provide occupational
17 medicine and related disciplines.

18 (6) Complies with any other requirement the administrative
19 director determines is necessary to provide medical services to
20 injured employees consistent with the intent of this article,
21 including, but not limited to, a written patient grievance policy.

22 (e) If the health care organization is a workers' compensation
23 insurer, third-party administrator, or any other entity that the
24 administrative director determines meets the requirements of
25 Section 4600.6, the administrative director shall certify the
26 organization to provide health care pursuant to Section 4600.3 if
27 the director finds that it meets the following additional
28 requirements:

29 (1) Proposes to provide all medical and health care services that
30 may be required by this article.

31 (2) Provides a program involving cooperative efforts by the
32 employees, the employer, and the health plan to promote workplace
33 health and safety, consultative and other services, and early return
34 to work for injured employees.

35 (3) Proposes a timely and accurate method to meet the
36 requirements set forth by the administrative director for all carriers
37 of workers' compensation coverage to report necessary information
38 regarding medical and health care service cost and utilization, rates
39 of return to work, average time in medical treatment, and other

1 measures as determined by the administrative director to enable
2 the director to determine the effectiveness of the plan.

3 (4) Agrees to provide the administrative director with
4 information, reports, and records relating to provider accessibility,
5 peer review, utilization review, quality assurance, advertising,
6 disclosure, medical and financial audits, and grievance systems,
7 upon request, if the administrative director determines the
8 information is necessary to verify that the plan is providing medical
9 treatment to injured employees consistent with the intent of this
10 article.

11 Disclosure of peer review proceedings and records to the
12 administrative director shall not alter the status of the proceedings
13 or records as privileged and confidential communications pursuant
14 to subdivision (d) of Section 10133 of the Insurance Code.

15 (5) Demonstrates the capability to provide occupational
16 medicine and related disciplines.

17 (6) Complies with any other requirement the administrative
18 director determines is necessary to provide medical services to
19 injured employees consistent with the intent of this article,
20 including, but not limited to, a written patient grievance policy.

21 (7) Complies with the following requirements:

22 (A) An organization certified by the administrative director
23 under this subdivision may not provide or undertake to arrange
24 for the provision of health care to employees, or to pay for or to
25 reimburse any part of the cost of that health care in return for a
26 prepaid or periodic charge paid by or on behalf of those employees.

27 (B) Every organization certified under this subdivision shall
28 operate on a fee-for-service basis. As used in this section, fee for
29 service refers to the situation where the amount of reimbursement
30 paid by the employer to the organization or providers of health
31 care is determined by the amount and type of health care rendered
32 by the organization or provider of health care.

33 (C) An organization certified under this subdivision is prohibited
34 from assuming risk.

35 (f) (1) A workers' compensation health care provider
36 organization authorized by the Department of ~~Corporations~~
37 *Business Oversight* on December 31, 1997, shall be eligible for
38 certification as a health care organization under subdivision (e).

39 (2) An entity that had, on December 31, 1997, submitted an
40 application with the Commissioner of ~~Corporations~~ *Business*

1 *Oversight* under Part 3.2 (commencing with Section 5150) shall
2 be considered an applicant for certification under subdivision (e)
3 and shall be entitled to priority in consideration of its application.
4 The Commissioner of ~~Corporations~~ *Business Oversight* shall
5 provide complete files for all pending applications to the
6 administrative director on or before January 31, 1998.

7 (g) The provisions of this section shall not affect the
8 confidentiality or admission in evidence of a claimant's medical
9 treatment records.

10 (h) Charges for services arranged for or provided by health care
11 service plans certified by this section and that are paid on a
12 per-enrollee-periodic-charge basis shall not be subject to the
13 schedules adopted by the administrative director pursuant to
14 Section 5307.1.

15 (i) Nothing in this section shall be construed to expand or
16 constrict any requirements imposed by law on a health care service
17 plan or insurer when operating as other than a health care
18 organization pursuant to this section.

19 (j) In consultation with interested parties, including the
20 Department of ~~Corporations~~ *Business Oversight* and the
21 Department of Insurance, the administrative director shall adopt
22 rules necessary to carry out this section.

23 (k) The administrative director shall refuse to certify or may
24 revoke or suspend the certification of any health care organization
25 under this section if the director finds that:

26 (1) The plan for providing medical treatment fails to meet the
27 requirements of this section.

28 (2) A health care service plan licensed by the Department of
29 Managed Health Care, a workers' compensation health care
30 provider organization authorized by the Department of
31 ~~Corporations~~, *Business Oversight*, or a carrier licensed by the
32 Department of Insurance is not in good standing with its licensing
33 agency.

34 (3) Services under the plan are not being provided in accordance
35 with the terms of a certified plan.

36 (l) (1) When an injured employee requests chiropractic
37 treatment for work-related injuries, the health care organization
38 shall provide the injured worker with access to the services of a
39 chiropractor pursuant to guidelines for chiropractic care established
40 by paragraph (2). Within five working days of the employee's

1 request to see a chiropractor, the health care organization and any
2 person or entity who directs the kind or manner of health care
3 services for the plan shall refer an injured employee to an affiliated
4 chiropractor for work-related injuries that are within the guidelines
5 for chiropractic care established by paragraph (2). Chiropractic
6 care rendered in accordance with guidelines for chiropractic care
7 established pursuant to paragraph (2) shall be provided by duly
8 licensed chiropractors affiliated with the plan.

9 (2) The health care organization shall establish guidelines for
10 chiropractic care in consultation with affiliated chiropractors who
11 are participants in the health care organization's utilization review
12 process for chiropractic care, which may include qualified medical
13 evaluators knowledgeable in the treatment of chiropractic
14 conditions. The guidelines for chiropractic care shall, at a
15 minimum, explicitly require the referral of any injured employee
16 who so requests to an affiliated chiropractor for the evaluation or
17 treatment, or both, of neuromusculoskeletal conditions.

18 (3) Whenever a dispute concerning the appropriateness or
19 necessity of chiropractic care for work-related injuries arises, the
20 dispute shall be resolved by the health care organization's
21 utilization review process for chiropractic care in accordance with
22 the health care organization's guidelines for chiropractic care
23 established by paragraph (2).

24 Chiropractic utilization review for work-related injuries shall be
25 conducted in accordance with the health care organization's
26 approved quality assurance standards and utilization review process
27 for chiropractic care. Chiropractors affiliated with the plan shall
28 have access to the health care organization's provider appeals
29 process and, in the case of chiropractic care for work-related
30 injuries, the review shall include review by a chiropractor affiliated
31 with the health care organization, as determined by the health care
32 organization.

33 (4) The health care organization shall inform employees of the
34 procedures for processing and resolving grievances, including
35 those related to chiropractic care, including the location and
36 telephone number where grievances may be submitted.

37 (5) All guidelines for chiropractic care and utilization review
38 shall be consistent with the standards of this code that require care
39 to cure or relieve the effects of the industrial injury.

1 (m) Individually identifiable medical information on patients
2 submitted to the division shall not be subject to the California
3 Public Records Act (Chapter 3.5 (commencing with Section 6250)
4 of Division 7 of Title 1 of the Government Code).

5 (n) (1) When an injured employee requests acupuncture
6 treatment for work-related injuries, the health care organization
7 shall provide the injured worker with access to the services of an
8 acupuncturist pursuant to guidelines for acupuncture care
9 established by paragraph (2). Within five working days of the
10 employee's request to see an acupuncturist, the health care
11 organization and any person or entity who directs the kind or
12 manner of health care services for the plan shall refer an injured
13 employee to an affiliated acupuncturist for work-related injuries
14 that are within the guidelines for acupuncture care established by
15 paragraph (2). Acupuncture care rendered in accordance with
16 guidelines for acupuncture care established pursuant to paragraph
17 (2) shall be provided by duly licensed acupuncturists affiliated
18 with the plan.

19 (2) The health care organization shall establish guidelines for
20 acupuncture care in consultation with affiliated acupuncturists who
21 are participants in the health care organization's utilization review
22 process for acupuncture care, which may include qualified medical
23 evaluators. The guidelines for acupuncture care shall, at a
24 minimum, explicitly require the referral of any injured employee
25 who so requests to an affiliated acupuncturist for the evaluation
26 or treatment, or both, of neuromusculoskeletal conditions.

27 (3) Whenever a dispute concerning the appropriateness or
28 necessity of acupuncture care for work-related injuries arises, the
29 dispute shall be resolved by the health care organization's
30 utilization review process for acupuncture care in accordance with
31 the health care organization's guidelines for acupuncture care
32 established by paragraph (2).

33 Acupuncture utilization review for work-related injuries shall
34 be conducted in accordance with the health care organization's
35 approved quality assurance standards and utilization review process
36 for acupuncture care. Acupuncturists affiliated with the plan shall
37 have access to the health care organization's provider appeals
38 process and, in the case of acupuncture care for work-related
39 injuries, the review shall include review by an acupuncturist

1 affiliated with the health care organization, as determined by the
2 health care organization.

3 (4) The health care organization shall inform employees of the
4 procedures for processing and resolving grievances, including
5 those related to acupuncture care, including the location and
6 telephone number where grievances may be submitted.

7 (5) All guidelines for acupuncture care and utilization review
8 shall be consistent with the standards of this code that require care
9 to cure or relieve the effects of the industrial injury.

10 SEC. 73. Section 11604.5 of the Probate Code is amended to
11 read:

12 11604.5. (a) This section applies when distribution from a
13 decedent's estate is made to a transferee for value who acquires
14 any interest of a beneficiary in exchange for cash or other
15 consideration.

16 (b) For purposes of this section, a transferee for value is a person
17 who satisfies both of the following criteria:

18 (1) He or she purchases the interest from a beneficiary for
19 consideration pursuant to a written agreement.

20 (2) He or she, directly or indirectly, regularly engages in the
21 purchase of beneficial interests in estates for consideration.

22 (c) This section does not apply to any of the following:

23 (1) A transferee who is a beneficiary of the estate or a person
24 who has a claim to distribution from the estate under another
25 instrument or by intestate succession.

26 (2) A transferee who is either the registered domestic partner
27 of the beneficiary, or is related by blood, marriage, or adoption to
28 the beneficiary or the decedent.

29 (3) A transaction made in conformity with the California Finance
30 Lenders Law (Division 9 (commencing with Section 22000) of
31 the Financial Code) and subject to regulation by the Department
32 of ~~Corporations~~. *Business Oversight*.

33 (4) A transferee who is engaged in the business of locating
34 missing or unknown heirs and who acquires an interest from a
35 beneficiary solely in exchange for providing information or services
36 associated with locating the heir or beneficiary.

37 (d) A written agreement is effective only if all of the following
38 conditions are met:

39 (1) The executed written agreement is filed with the court not
40 later than 30 days following the date of its execution or, if

1 administration of the decedent's estate has not commenced, then
2 within 30 days of issuance of the letters of administration or letters
3 testamentary, but in no event later than 15 days prior to the hearing
4 on the petition for final distribution. Prior to filing or serving that
5 written agreement, the transferee for value shall redact any
6 personally identifying information about the beneficiary, other
7 than the name and address of the beneficiary, and any financial
8 information provided by the beneficiary to the transferee for value
9 on the application for cash or other consideration, from the
10 agreement.

11 (2) If the negotiation or discussion between the beneficiary and
12 the transferee for value leading to the execution of the written
13 agreement by the beneficiary was conducted in a language other
14 than English, the beneficiary shall receive the written agreement
15 in English, together with a copy of the agreement translated into
16 the language in which it was negotiated or discussed. The written
17 agreement and the translated copy, if any, shall be provided to the
18 beneficiary.

19 (3) The documents signed by, or provided to, the beneficiary
20 are printed in at least 10-point type.

21 (4) The transferee for value executes a declaration or affidavit
22 attesting that the requirements of this section have been satisfied,
23 and the declaration or affidavit is filed with the court within 30
24 days of execution of the written agreement or, if administration of
25 the decedent's estate has not commenced, then within 30 days of
26 issuance of the letters of administration or letters testamentary,
27 but in no event later than 15 days prior to the hearing on the petition
28 for final distribution.

29 (5) Notice of the assignment is served on the personal
30 representative or the attorney of record for the personal
31 representative within 30 days of execution of the written agreement
32 or, if general or special letters of administration or letters
33 testamentary have not been issued, then within 30 days of issuance
34 of the letters of administration or letters testamentary, but in no
35 event later than 15 days prior to the hearing on the petition for
36 final distribution.

37 (e) The written agreement shall include the following terms, in
38 addition to any other terms:

39 (1) The amount of consideration paid to the beneficiary.

40 (2) A description of the transferred interest.

1 (3) If the written agreement so provides, the amount by which
2 the transferee for value would have its distribution reduced if the
3 beneficial interest assigned is distributed prior to a specified date.

4 (4) A statement of the total of all costs or fees charged to the
5 beneficiary resulting from the transfer for value, including, but not
6 limited to, transaction or processing fees, credit report costs, title
7 search costs, due diligence fees, filing fees, bank or electronic
8 transfer costs, or any other fees or costs. If all the costs and fees
9 are paid by the transferee for value and are included in the amount
10 of the transferred interest, then the statement of costs need not
11 itemize any costs or fees. This subdivision shall not apply to costs,
12 fees, or damages arising out of a material breach of the agreement
13 or fraud by or on the part of the beneficiary.

14 (f) A written agreement shall not contain any of the following
15 provisions and, if any such provision is included, that provision
16 shall be null and void:

17 (1) A provision holding harmless the transferee for value, other
18 than for liability arising out of fraud by the beneficiary.

19 (2) A provision granting to the transferee for value agency
20 powers to represent the beneficiary's interest in the decedent's
21 estate beyond the interest transferred.

22 (3) A provision requiring payment by the beneficiary to the
23 transferee for value for services not related to the written agreement
24 or services other than the transfer of interest under the written
25 agreement.

26 (4) A provision permitting the transferee for value to have
27 recourse against the beneficiary if the distribution from the estate
28 in satisfaction of the beneficial interest is less than the beneficial
29 interest assigned to the transferee for value, other than recourse
30 for any expense or damage arising out of the material breach of
31 the agreement or fraud by the beneficiary.

32 (g) The court on its own motion, or on the motion of the personal
33 representative or other interested person, may inquire into the
34 circumstances surrounding the execution of, and the consideration
35 for, the written agreement to determine that the requirements of
36 this section have been satisfied.

37 (h) The court may refuse to order distribution under the written
38 agreement, or may order distribution on any terms that the court
39 considers equitable, if the court finds that the transferee for value
40 did not substantially comply with the requirements of this section,

1 or if the court finds that any of the following conditions existed at
2 the time of transfer:

3 (1) The fees, charges, or consideration paid or agreed to be paid
4 by the beneficiary were grossly unreasonable.

5 (2) The transfer of the beneficial interest was obtained by duress,
6 fraud, or undue influence.

7 (i) In addition to any remedy specified in this section, for any
8 willful violation of the requirements of this section found to be
9 committed in bad faith, the court may require the transferee for
10 value to pay to the beneficiary up to twice the value paid for the
11 assignment.

12 (j) Notice of the hearing on any motion brought under this
13 section shall be served on the beneficiary and on the transferee for
14 value at least 15 days before the hearing in the manner provided
15 in Section 415.10 or 415.30 of the Code of Civil Procedure.

16 (k) If the decedent's estate is not subject to a pending court
17 proceeding under the Probate Code in California, but is the subject
18 of a probate proceeding in another state, the transferee for value
19 shall not be required to submit to the court a copy of the written
20 agreement as required under paragraph (1) of subdivision (d). If
21 the written agreement is entered into in California or if the
22 beneficiary is domiciled in California, that written agreement shall
23 otherwise conform to the provisions of subdivisions (d), (e), and
24 (f) in order to be effective.

25 SEC. 74. Section 408 of the Revenue and Taxation Code is
26 amended to read:

27 408. (a) Except as otherwise provided in subdivisions (b), (c),
28 (d), (e), and (g), any information and records in the assessor's
29 office that are not required by law to be kept or prepared by the
30 assessor, disabled veterans' exemption claims, and homeowners'
31 exemption claims, are not public documents and shall not be open
32 to public inspection. Property receiving the homeowners'
33 exemption shall be clearly identified on the assessment roll. The
34 assessor shall maintain records which shall be open to public
35 inspection to identify those claimants who have been granted the
36 homeowners' exemption.

37 (b) The assessor may provide any appraisal data in his or her
38 possession to the assessor of any county.

39 The assessor shall disclose information, furnish abstracts, or
40 permit access to all records in his or her office to law enforcement

1 agencies, the county grand jury, the board of supervisors or their
2 duly authorized agents, employees, or representatives when
3 conducting an investigation of the assessor's office pursuant to
4 Section 25303 of the Government Code, the county recorder when
5 conducting an investigation to determine whether a documentary
6 transfer tax is imposed, the Controller, employees of the Controller
7 for property tax postponement purposes, probate referees,
8 employees of the Franchise Tax Board for tax administration
9 purposes only, staff appraisers of the Department of Financial
10 Institutions, the Department of Transportation, the Department of
11 General Services, the State Board of Equalization, the State Lands
12 Commission, the State Department of Social Services, the
13 Department of Child Support Services, the Department of Water
14 Resources, and other duly authorized legislative or administrative
15 bodies of the state pursuant to their authorization to examine the
16 records. Whenever the assessor discloses information, furnishes
17 abstracts, or permits access to records in his or her office to staff
18 appraisers of the Department of ~~Financial Institutions~~, *Business*
19 *Oversight*, the Department of Transportation, the Department of
20 General Services, the State Lands Commission, or the Department
21 of Water Resources pursuant to this section, the department shall
22 reimburse the assessor for any costs incurred as a result thereof.

23 (c) Upon the request of the tax collector, the assessor shall
24 disclose and provide to the tax collector information used in the
25 preparation of that portion of the unsecured roll for which the taxes
26 thereon are delinquent. The tax collector shall certify to the assessor
27 that he or she needs the information requested for the enforcement
28 of the tax lien in collecting those delinquent taxes. Information
29 requested by the tax collector may include social security numbers,
30 and the assessor shall recover from the tax collector his or her
31 actual and reasonable costs for providing the information. The tax
32 collector shall add the costs described in the preceding sentence
33 to the assessee's delinquent tax lien and collect those costs subject
34 to subdivision (e) of Section 2922.

35 (d) The assessor shall, upon the request of an assessee or his or
36 her designated representative, permit the assessee or representative
37 to inspect or copy any market data in the assessor's possession.
38 For purposes of this subdivision, "market data" means any
39 information in the assessor's possession, whether or not required
40 to be prepared or kept by him or her, relating to the sale of any

1 property comparable to the property of the assessee, if the assessor
2 bases his or her assessment of the assessee's property, in whole
3 or in part, on that comparable sale or sales. The assessor shall
4 provide the names of the seller and buyer of each property on
5 which the comparison is based, the location of that property, the
6 date of the sale, and the consideration paid for the property, whether
7 paid in money or otherwise. However, for purposes of providing
8 market data, the assessor may not display any document relating
9 to the business affairs or property of another.

10 (e) (1) With respect to information, documents, and records,
11 other than market data as defined in subdivision (d), the assessor
12 shall, upon request of an assessee of property, or his or her
13 designated representative, permit the assessee or representative to
14 inspect or copy all information, documents, and records, including
15 auditors' narrations and workpapers, whether or not required to
16 be kept or prepared by the assessor, relating to the appraisal and
17 the assessment of the assessee's property, and any penalties and
18 interest thereon.

19 (2) After enrolling an assessment, the assessor shall respond to
20 a written request for information supporting the assessment,
21 including, but not limited to, any appraisal and other data requested
22 by the assessee.

23 (3) Except as provided in Section 408.1, an assessee, or his or
24 her designated representative, may not be permitted to inspect or
25 copy information and records that also relate to the property or
26 business affairs of another, unless that disclosure is ordered by a
27 competent court in a proceeding initiated by a taxpayer seeking to
28 challenge the legality of the assessment of his or her property.

29 (f) (1) Permission for the inspection or copying requested
30 pursuant to subdivision (d) or (e) shall be granted as soon as
31 reasonably possible to the assessee or his or her designated
32 representative.

33 (2) If the assessee, or his or her designated representative,
34 requests the assessor to make copies of any of the requested
35 records, the assessee shall reimburse the assessor for the reasonable
36 costs incurred in reproducing and providing the copies.

37 (3) If the assessor fails to permit the inspection or copying of
38 materials or information as requested pursuant to subdivision (d)
39 or (e) and the assessor introduces any requested materials or
40 information at any assessment appeals board hearing, the assessee

or his or her representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of continuance.

(g) Upon the written request of the tax collector, the assessor shall provide to the tax collector information for the preparation and enforcement of Part 6 (commencing with Section 3351). The tax collector shall certify to the assessor that he or she needs the contact information to assist with the preparation and enforcement of Part 6 (commencing with Section 3351). The assessor shall provide the information, which may not include social security numbers. Any information provided to the tax collector pursuant to this subdivision shall not become a public record and shall not be open to public inspection. The tax collector shall reimburse the assessor for the actual and reasonable costs incurred by the assessor for providing the information to administer this subdivision. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent taxes and include the costs incurred subject to Sections 4112 and 4672.2. The tax collector or his or her designated employee shall, under penalty of perjury, certify to the assessor that he or she needs the information to assist with the preparation and enforcement of Part 6 (commencing with Section 3351), and that the information provided pursuant to this subdivision that is not public record and that is not open to public inspection shall not become public record and shall not be open to public inspection.

SEC. 75. Section 22005.1 of the Welfare and Institutions Code is amended to read:

22005.1. (a) The State Department of Health Services shall only certify a long-term care insurance policy that substantially meets the requirements of Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code, except the requirements of Sections 10232.1, 10232.2, 10232.25, 10232.8, 10232.9, and 10232.92 of the Insurance Code, and that provides all of the items specified in subdivision (b). The State Department of Health Services shall only certify a health care service plan contract that has been approved by the Department of ~~Corporations~~ *Business Oversight* pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code as providing substantially equivalent coverage to that required by

1 Chapter 2.6 (commencing with Section 10230) of Part 2 of Division
2 2 of the Insurance Code, and that provides all of the items specified
3 in subdivision (b). Policies issued by organizations subject to the
4 Insurance Code and regulated by the Department of Insurance
5 shall also be approved by the Department of Insurance.

6 (b) Only policies and contracts that provide all of the following
7 items shall be certified by the department:

8 (1) Individual assessment and case management by a
9 coordinating entity designated and approved by the department.

10 (2) Levels and durations of benefits that meet minimum
11 standards set by the State Department of Health Services pursuant
12 to Section 22009.

13 (3) Protection against loss of benefits due to inflation.

14 (4) A periodic record issued to the insured including an
15 explanation of insurance payments or benefits paid that count
16 toward Medi-Cal asset protection under this division.

17 (5) Compliance with any other requirements imposed by
18 regulations adopted by the State Department of Health Services
19 or the State Department of Social Services and consistent with the
20 purposes of this division.